

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT IN AND FOR
PINELLAS COUNTY, FLORIDA
CASE NO.: 97-5968-CI-11

X
:
:
JOHN EASTMAN, :
:
Plaintiff, :
:
vs. :
:
BROWN & WILLIAMSON TOBACCO CORP., :
individually and as successor by :
merger to THE AMERICAN TOBACCO :
COMPANY, a foreign corporation; :
PHILIP MORRIS, INCORPORATED, a :
foreign corporation, :
:
Defendants. :

X
BEFORE: HONORABLE ANTHONY RONDOLINO
PLACE: The Judicial Building
545 First Avenue North
St. Petersburg, Florida
DATE: Wednesday, March 26, 2003
TIME: 1:00 p.m. - 4:55 p.m.
REPORTED BY: MARY ELIZABETH BLAZER, RPR
Court Reporter and Notary Public
Sixth Judicial Circuit

TESTIMONY AND PROCEEDINGS

Volume 27 Pages 2935 - 3135
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2936

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2937

1 I N D E X T O E X H I B I T S

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For I.D. In Evidence

3

For the Plaintiff:

4

Exhibit 509 2939

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Exhibit 662 and others 3134

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1 I N D E X T O P R O C E E D I N G S

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Witness or Proceedings Page

3

4 TIMOTHY MORRISSEY (By Deposition) 2940

5

JOHN EASTMAN

Direct Examination By Mr. Acosta: 2983

6

Cross-Examination By Mr. Lydon: 3057

Cross-Examination By Mr. Parrish: 3083

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Redirect Examination By Mr. Acosta 3130

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2939

1 (1:02 p.m.) P-R-O-C-E-E-D-I-N-G-S
2 THE BAILIFF: All rise, please. Court is back
3 in session.
4 You may be seated.
5 THE COURT: All right. Mr. Acosta, are you
6 ready for the jury to come in?
7 MR. ACOSTA: Yes, Your Honor.
8 THE COURT: Let's bring them in, Sheriff.
9 (Whereupon, the jury returned at 1:03 p.m.)
10 THE BAILIFF: The jury is present and seated,
11 Your Honor.
12 THE COURT: All right. Thank you. Everybody
13 be seated.
14 Let's proceed.
15 MR. ACOSTA: Thank you, Your Honor.
16 Before we read that deposition, the plaintiff
17 would like to first move into Plaintiff's Exhibit
18 509. I don't believe there's any objection.
19 MR. LYDON: Correct.
20 THE COURT: It will be received.
21 (Thereupon, Plaintiffs Exhibit 509 was
22 received in evidence.)
23 MR. ACOSTA: Thank you, Your Honor.
24 At this time I would like it publish 509.
25 These are Mr. Eastman -- summary of Mr. Eastman's

2940

1 medical bills claimed in this action, which total
2 \$37,616.38.
3 Your Honor, at this time we would like to read
4 the deposition of Timothy Morrissey
5 THE COURT: Very well.
6 MR. ACOSTA: This is the deposition of Timothy
7 Morrissey, taken on January 29th, 2003, in Cedar
8 Rapids, Iowa.
9 Thereupon,
10 TIMOTHY MORRISSEY,
11 was called as a witness by deposition and testified as
12 follows:
13 "QUESTION: Would you please state your name
14 for the record.
15 "ANSWER: My name is Timothy Morrissey.
16 "QUESTION: What is your current address,
17 Mr. Morrissey?
18 "ANSWER: [DELETED]
19 .

20 "QUESTION: And your birth date?
21 "ANSWER: 2/16/38.
22 "QUESTION: How long have you been friends
23 with Mr. Eastman?
24 "ANSWER: Very close to 40 years, probably.
25 "QUESTION: Do you remember how it was you
2941
1 first came to meet Mr. Eastman?
2 "ANSWER: I was publishing a magazine in Cedar
3 Rapids, and he walked in my office and sat down and
4 said, "I was told to meet you." And that's where
5 we met.
6 "QUESTION: And who told him to meet you?
7 "ANSWER: I don't have a clue. Friends that
8 we knew in common.
9 "QUESTION: Are you married?
10 "ANSWER: Yes.
11 "QUESTION: And what is your wife's name?
12 "ANSWER: Susan. But no one knows her as
13 Susan. She's Suki, S-U-K-I.
14 "QUESTION: How long have you been married to
15 Suki?
16 "ANSWER: It will be 37 years this coming
17 summer.
18 "QUESTION: Where do you go to high school?
19 "ANSWER: Mount Vernon High School.
20 "QUESTION: What year did you graduate?
21 "ANSWER: 1957.
22 "QUESTION: So if you met Mr. Eastman around
23 1963 in Cedar Rapids, you were married to your
24 first wife then?
25 "ANSWER: It would have been -- I said '63,
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1 but I'm thinking it might have been closer to '64
2 or '65 when I met John.
3 "QUESTION: And why do you think it might have
4 been more in the '64, '65 time frame?
5 "ANSWER: Because I was publishing that
6 magazine at the time.
7 "QUESTION: What was the name of the magazine?
8 "ANSWER: It was the initial "CR Scene,"
9 S-C-E-N-E.
10 "QUESTION: What was the magazine about?
11 "ANSWER: It was current events that was going
12 on, going to happen in the City. And it had a
13 television guide and so on. I would like to say we
14 were ahead of TV Guide by about two years. Maybe
15 it wasn't quite that long, but it was a while.
16 "QUESTION: With the CR standing for Cedar
17 Rapids?
18 "ANSWER: Yes.
19 "QUESTION: And how was it that Mr. Eastman
20 was referred to at "CR Scene" magazine?
21 "ANSWER: I don't remember. But John had
22 written and produced a series of radio and
23 television spots call the "Iowa Story." They were
24 five-minute historical documentary pieces, and they
25 were absolutely brilliant. They won awards in this
2943
1 area at that time, and we ran the Iowa Story in our
2 magazine -- in the front of the magazine, and I
3 think it ran maybe once or twice through this
4 friend. It may have been Ed Gorman, who is a

5 novelist now; still writes here in Cedar Rapids.
6 And John came in to meet me at the time.
7 "QUESTION: Did you know about the Iowa Story
8 before you met Mr. Eastman?
9 "ANSWER: Oh, absolutely. It was very popular
10 here. It was so tightly written that you could do
11 a 30-second opening or a 10-second opening and a
12 30-second thing in the middle and then an ad in
13 the back. So it was so tightly written that you
14 would understand something about the Town of
15 Indians and understand it very well because it was
16 so well-written, and John was a genius at this.
17 And It was very well received. It was produced by
18 the Iowa Electric Light and Power Company.
19 "QUESTION: Did Mr. Eastman appear on the
20 pieces, or did he narrate them?
21 "ANSWER: I think he narrated all of them.
22 "QUESTION: Where were they shown?
23 "ANSWER: Well, they would have been on
24 probably KCRG or WMT, one of local it stations.
25 "QUESTION: That's television stations?

2944

1 "ANSWER: Yes. But it was radio as well.
2 "QUESTION: You're saying they were widely
3 known in the community?
4 "ANSWER: I would say during that period that
5 everybody knew the Iowa Story that was around here.
6 "QUESTION: What were some of the other
7 subjects other than the Indians?
8 "ANSWER: Well, I can remember one of the
9 Amana Colonies. I remember a story that he told
10 about Chief Blackhawk. I remember a story he told
11 about the Indians that were waring in northern
12 Iowa. I don't remember the names of the tribes any
13 longer, but I remember the stories quite well. And
14 they were just extremely well-written, very tight.
15 "QUESTION: Do you know who wrote them?
16 "ANSWER: John, every one of them.
17 "QUESTION: And do you know who did the
18 research for the pieces?
19 "ANSWER: I think he did a lot of that
20 himself. He had other people around him, so I
21 would be -- I would be guessing if I told you I
22 knew who did that. I don't.
23 "QUESTION: Do you remember how many different
24 spots there were as parts of the Iowa Story series?
25 "ANSWER: Oh, I would think there would be 30

2945

1 to 40. I don't know. I just couldn't begin to
2 guess at that point. It was right after he had
3 done a script for The Fugitive, one of my favorite
4 shows at the time.
5 "QUESTION: How did you come to know about
6 Mr. Eastman doing a script for The Fugitive?
7 "ANSWER: I think that somebody might have
8 told me that it was some Marion writer, and it was
9 about tigers, because his father had been a
10 veterinarian who was a tiger trainer. And remember
11 the episodes. It was done very well.
12 "QUESTION: Do you know whether that was came
13 out before or after you meet Mr. Eastman?
14 "ANSWER: It was probably before --
15 "QUESTION: Because --

16 "ANSWER: Because I don't remember -- I don't
17 remember associating myself with the writer at that
18 time.
19 "QUESTION: Do you remember talking to him
20 about the screenplay after you met him?
21 "ANSWER: Yeah, I remember conversing about
22 it. He said, 'It was a lot of work going to
23 Hollywood, rewriting and so on.'
24 MR. ACOSTA: Do I continue or go to the next
25 page?

2946

1 MR. DENSON: Next page.
2 MR. ACOSTA: "QUESTION: When did you first
3 meet Mr. Eastman?
4 "ANSWER: As I said, he came in; but it was
5 after, I believe, the Iowa Story was running.
6 "QUESTION: I see. And why did he come to see
7 you at the magazine?
8 "ANSWER: I believe this mutual friend said
9 that we should meet, so we did. And we went and
10 had a drink or a Coke or something. I don't
11 recall.
12 "QUESTION: Did your relationship develop from
13 that point after your initial meeting in '64, '65?
14 "ANSWER: I guess we liked each other because
15 it grew.
16 "QUESTION: And when you say it grew, are you
17 talking about socially or professionally or both?
18 "ANSWER: I don't know. I would say both. I
19 mean, we tried to do some things together from time
20 to time.
21 "QUESTION: Since you've referred to
22 Mr. Eastman as your friend, and I think -- you
23 think of him more of a social relationship than as
24 a professional one now?
25 "ANSWER: I certainly would say that, yes.

2947

1 Even though we've made some film together and we've
2 done some things, we were -- we were rather
3 closely involved with the film that got made for
4 the State of Florida many years ago on drug abuse,
5 and that was shot in San Francisco. But he had an
6 apartment there, and I was back and forth for that
7 for a while and --
8 "QUESTION: When was that that you were in San
9 Francisco shooting?
10 "ANSWER: It would have been '66 or '67 -- '67
11 probably.
12 "QUESTION: Was anyone else involved with you
13 in shooting that spot for the State of Florida on
14 drug abuse?
15 "ANSWER: Well, there was a lot of people
16 around, but like -- camera people and so on. I've
17 names of -- John was one of them, and Andy was
18 another one. And, I mean -- that was longtime ago,
19 so people involved -- I don't know.
20 "QUESTION: But you were involved in the State
21 of Florida piece?
22 "ANSWER: Yeah, because I had written a book
23 for Senator Skip Bafoles (phonetic) on drug abuse.
24 "QUESTION: Do you remember whether the film
25 was ever shown in the state of Florida?

2948

1 "ANSWER: I don't have a clue, no.
2 "QUESTION: Did the two of you work together
3 on the project?
4 "ANSWER: I was there on the set for a couple
5 days. I don't like to go out while they're
6 shooting because it's very boring and a lot of
7 people get in the way, and I don't want to be
8 around when they're trying to work.
9 "QUESTION: What was your role in the project?
10 "ANSWER: Nothing that -- except that I guess
11 that I was helping to get it together.
12 "QUESTION: Had you been hired by the State of
13 Florida or had Mr. Eastman hired --
14 "ANSWER: I was hired by the State of Florida.
15 "QUESTION: And was Mr. Eastman involved
16 because of you?
17 "ANSWER: I would like to be able to say that
18 so -- because that would be the natural assumption,
19 but I don't think he was hired because of me,
20 frankly. I think he had done some work for them in
21 the past.
22 "QUESTION: So he was hired by the State of
23 Florida?
24 "ANSWER: Yes.
25 "QUESTION: I'm sorry. That's all I was

2949

1 trying to figure out, was what his role in the
2 project for the State of Florida in producing the
3 spot on drug abuse.
4 "ANSWER: It would have been an independent
5 producer.
6 "QUESTION: Was he responsible for the content
7 of the film?
8 "ANSWER: I couldn't answer that.
9 "QUESTION: Were you responsible for the
10 content?
11 "ANSWER: No, I was not. I -- my first
12 assumption would be that John wrote the script. It
13 was extremely tight and very well done, but that's
14 an assumption. It's not a fact because I don't
15 know.
16 "QUESTION: Was -- was his company hired to
17 produce the piece?
18 "ANSWER: I'm not certain whether it would be
19 a company or it would have been him personally. I
20 suppose Eastman & Associates or something, but I'm
21 not certain. I wasn't part of the contract.
22 "QUESTION: Was it -- as best you can recall,
23 was there anyone other than Mr. Eastman who was
24 responsible for the content of the piece?
25 "ANSWER: No.

2950

1 "QUESTION: Do you remember a woman named
2 Susan Portz being involved in the project?
3 "ANSWER: Susan Portz I know, yes. And Susan
4 may very well have been involved.
5 "QUESTION: When you went to San Francisco for
6 the shoot, do you remember her being there with
7 Mr. Eastman?
8 "ANSWER: I think Susan was there, yes.
9 "QUESTION: Do you remember --
10 "ANSWER: But Susan was not a writer.
11 "QUESTION: What was her role in the piece?

12 "ANSWER: Susan would have been more
13 production -- more in the production end.
14 "QUESTION: Anyone else other than Mr. Eastman
15 who would have been involved in writing the piece?
16 "ANSWER: I don't know anyone.
17 "QUESTION: Do you remember seeing the
18 finished product?
19 "ANSWER: I recall seeing a print that was
20 probably close to being a finished product, but
21 maybe it hadn't been AB rolled and the right sound
22 track put on it yet. But whether I saw the
23 finished product or not, I can't recall that.
24 "QUESTION: Describe, though, what you saw.
25 "ANSWER: It was a story of people getting

2951

1 stoned in an apartment in San Francisco in the
2 Ashbury District; and it end up with driving down a
3 country highway in the mountains, and they have an
4 automobile accident or they look like they are
5 going to. And I think it ended with one of them
6 had died on the floor; and the guy was poking him,
7 and he said, "Don't bother him. He may be dead."
8 And I think that was the last line. It was pretty
9 tough.

10 "QUESTION: Was there any narration in the
11 piece?

12 "ANSWER: Oh, yeah, I'm certain. As I recall,
13 there was.

14 "QUESTION: And was that Mr. Eastman's voice?

15 "ANSWER: Well, there wasn't anybody better to
16 do it than him.

17 "QUESTION: Do you recall whether it was
18 Mr. Eastman's voice?

19 "ANSWER: I don't recall if it is or not, but
20 I'm certain he did it.

21 "QUESTION: Any reason to believe that anyone
22 else's voice would appear as a narrator on the
23 piece?

24 "ANSWER: I have no reason to believe it. I
25 don't know.

2952

1 "QUESTION: Do you remember what drugs were
2 the subject of the piece for the State of Florida?

3 "ANSWER: No, I don't remember specifically."

4 MR. ACOSTA: May I confer with co-counsel for
5 one second?

6 THE COURT: You may.

7 MR. ACOSTA: We need to approach, Your Honor.

8 THE COURT: Okay.

9 (Thereupon, the following bench conference was
10 had:)

11 MR. ACOSTA: He tells me that they have
12 counter-designated this.

13 MR. LYDON: Everything that's down is yours.

14 MR. ACOSTA: Pardon me?

15 MR. DENSON: Let's Just skip it.

16 MR. ACOSTA: Yeah, yeah, let's undesignate
17 that.

18 MR. LYDON: For obvious reasons.

19 MR. ACOSTA: Yeah, I don't want to go into --

20 MR. WALLACE: "Please go to the next section."

21 MR. ACOSTA: Yeah, where does it go?

22 MR. LYDON: Seven pages later, 39.

23 MR. DENSON: Probably skip all that too, if
24 you want.
25 THE COURT: Mr. Acosta, are you having
2953
1 difficulty controlling your witness?
2 MR. ACOSTA: Yes. He was just a lose cannon
3 up there.
4 MR. LYDON: Over designated.
5 MR. ACOSTA: 44.
6 MR. LYDON: The difficulty, Your Honor, is
7 that they've designated some things related to some
8 other subjects.
9 MR. ACOSTA: Pardon? Does that eliminate all
10 this other stuff?
11 MR. LYDON: Yes. After the specific drugs.
12 MR. ACOSTA: 40 -- I'm on -- what page is
13 this?
14 MR. PARRISH: 35. Back to where you were
15 before we took out the --
16 MR. ACOSTA: There's no page number on my
17 page.
18 MR. CHRISTOPHER: Back to where you were.
19 THE COURT: Are you-all just talking off the
20 record now? Because this is --
21 MR. ACOSTA: Yes.
22 THE COURT: Okay. I don't think the court
23 reporter can take this.
24 MR. CHRISTOPHER: It doesn't need to be on the
25 record.
2954
1 (Pause.)
2 MR. ACOSTA: Back on the record.
3 That's 39, and then this is -- it goes to 45?
4 MR. LYDON: How about just closing the door
5 with this?
6 MR. WALLACE: Yeah, with the addictive.
7 MR. ACOSTA: Yeah, okay.
8 MR. WALLACE: And then move on to where you
9 want to go.
10 MR. LYDON: Okay
11 MR. ACOSTA: Thank you, Your Honor.
12 (Thereupon, the bench conference was
13 concluded.)
14 MR. ACOSTA: May I proceed, Your Honor?
15 THE COURT: You can proceed.
16 MR. ACOSTA: "QUESTION: Do you know where he
17 lived during the time you were in Tallahassee?
18 "ANSWER: I believe he lived in Washington,
19 D.C. --"
20 MR. CHRISTOPHER: Your Honor --
21 "ANSWER: -- "Alexandria, Virginia --"
22 THE COURT: Wait a minute.
23 MR. ACOSTA: Is that not the right place?
24 MR. CHRISTOPHER: No. I'll show you.
25 (Thereupon, the following bench conference was
2955
1 had:)
2 MR. WALLACE: More fun up here, Your Honor.
3 MR. CHRISTOPHER: Mr. Acosta had a change of
4 heart, and decided he didn't want to redact.
5 MR. ACOSTA: Well, no, we said we weren't
6 going to redo that.
7 MR. WALLACE: But the point is is that you

8 have already read the drug stuff, so you should be
9 able to close out on our counter-designation.

10 MR. ACOSTA: This is not your
11 counter-designation, though. This is our original
12 des -- you want to desig -- you are saying you want
13 to designate?

14 THE COURT: Wait a minute. Can I talk?
15 What's the problem with this? It's just something
16 that he -- it's a story that he did. It's a piece
17 -- subject matter -- you are going into all manner
18 of subject matters of things that -- that they --
19 scripts that he wrote and everything else, so --

20 MR. ACOSTA: I just don't want to open the
21 door to any of this other stuff.

22 THE COURT: Okay. Well, they've counter
23 designated. So you're not opening the door.

24 MR. DENSON: Well, Judge, we would object to
25 that because when asked if he remembers, he says,
2956

1 "I don't specifically recall." And then he says,
2 "But -- but I'm certain that I did." And then when
3 asked what he means when he's certain that he did,
4 he said, "Well, I was just heading that direction.
5 I don't have any real recollection." So that's
6 just not probative of anything. He doesn't have
7 any recollection, and he doesn't recall.

8 MR. PARRISH: Reminds me of my argument about
9 the Heimann transcript.

10 MR. WALLACE: But he does on 35.

11 MR. CHRISTOPHER: His first answer he says,
12 "He recalls."

13 MR. WALLACE: All we're proposing is that the
14 last few lines on page 35 -- he read that the film
15 dealt with addictive drugs, and then they can move
16 on to 44 or wherever they want to go.

17 THE COURT: I remember that being part of the
18 topic of the book he wrote.

19 MR. DENSON: No, no, just the underlined part.
20 The answer where he says he don't specifically
21 recall and that he doesn't have any real
22 recollection.

23 THE COURT: What's the matter with that?

24 MR. DENSON: Well, it's not relevant to
25 anything if he doesn't recall and doesn't have any
2957

1 recollection.

2 MR. WALLACE: He recalls it right there.

3 MR. CHRISTOPHER: Bottom of page 35 he recalls
4 it.

5 THE COURT: I'll permit it.
6 (Thereupon, the bench conference was
7 concluded.)

8 MR. DENSON: Question: "And to the best of
9 your recollection, was that shot in '66 or '77?"

10 Answer: "Yes."

11 "Do you remember whether anything in the piece
12 talked about the addictive nature of drugs?"

13 Answer: "I don't specifically recall, but I'm
14 certain that it did."

15 Question: "Why do you say that you're certain
16 that it did?"

17 Answer: "Well, I'm just -- it was headed in
18 that direction -- or I would assume it was headed

19 in that direction, but I don't have any real
20 recollection."
21 MR. ACOSTA: "QUESTION: Okay. Do you know
22 where he lived during the time you were in
23 Tallahassee?
24 "ANSWER: I believe he lived in Washington,
25 D.C. Alexandria, Virginia, to be more succinct.
2958
1 "QUESTION: Do you remember who he was living
2 with then?
3 "ANSWER: Susan Portz.
4 "QUESTION: Did you have any such interaction
5 with her?
6 "ANSWER: I've known her for all those years;
7 but interaction, no, not really. We did like each
8 other, I guess.
9 "QUESTION: Were you friends with Ms. Portz?
10 "ANSWER: It depends on how you define
11 'friends.' But, yes, I guess so.
12 "QUESTION: Did you know her independently of
13 Mr. Eastman?
14 "ANSWER: No.
15 "QUESTION: Do you remember having any view of
16 her work that she did in her production capacity
17 for Mr. Eastman?
18 "ANSWER: She was quite brilliant. She had a
19 very fast, electronic mind. She was very, very
20 inventive. She was probably good at -- as good as
21 editing film and videotape as anyone I've ever been
22 around. She had a tremendous eye. So she was
23 extremely talented, and they both worked for United
24 Way.
25 "QUESTION: Do you remember Mr. Eastman ever
2959
1 commenting one way or the other?
2 "ANSWER: Oh, he thought she was a genius.
3 "QUESTION: He told that you?
4 "ANSWER: Oh, yeah.
5 "QUESTION: What did he say in that regard?
6 "ANSWER: I don't recall anything specific.
7 But he felt that -- like I did, that this was a
8 very, very talented woman.
9 "QUESTION: From the time you met Mr. Eastman
10 around 1964 -- and let's just go, you know, through
11 the 1960s -- and these projects you worked with him
12 on, how would you describe his personality?
13 "ANSWER: Gosh, John is charismatic as hell.
14 He always smiles. Completely brilliant, perhaps
15 the smartest man I've ever new or have known.
16 Inordinate -- inordinately articulate.
17 "QUESTION: Would you say he was well-read?
18 "ANSWER: Yes, extremely.
19 "QUESTION: Why do you say that?
20 "ANSWER: You can't not be well-read and be
21 any of the things that I've just described. For
22 instance, when he was doing a radio show in Tampa,
23 I happened to be in town. And there was a woman
24 author -- a name I've long for gotten -- and before
25 he would interview her or interview anyone, he
2960
1 would read what they had written. He had this
2 woman on the radio, and I was sitting in the booth.
3 And they were talking in a lot of innocuous sense

4 in some innocuous ways, typical interview; and he
5 says, 'Well, it wasn't until page 47 that I really
6 felt you started to speak.' And this woman, tears
7 well up in her eyes and started to run down her
8 face. And she said he had absolutely put his
9 finger on the place that meant something to her.
10 And if that's not genius, I don't know what the
11 hell it is. That's the talent of this man, to be
12 able to take that person and know exactly what she
13 was trying to say. The interview after that was
14 just genius, as far as I'm concerned. So maybe I'm
15 prejudice, but I watched that with my own eyes.

16 "QUESTION: Did you always know him to do his
17 homework like that?

18 "ANSWER: I believe that he always did his
19 homework, yes.

20 "QUESTION: Do you remember when this took
21 place, this radio show in Tampa that you observed?

22 "ANSWER: It would have probably -- it would
23 have been probably early to mid-'70s. I mean, you
24 guys are probably better off at finding when he had
25 the billboards up in town. I flew down there to

2961

1 see him or to do some business in Tampa. He met me
2 at the airport. We were stopped three times
3 getting to the car. And we were driving down the
4 Causeway, and there was a billboard with his
5 picture on it. And I was certain he'd erected it
6 just for me.

7 "QUESTION: Were you impressed with his
8 success?

9 "ANSWER: I was impressed and a little
10 overwhelmed. I was in the doll house miniatures
11 business. And I went there to do a television show
12 with a couple other experts in that industry; so he
13 did his hour television show, and then we went out
14 and did his radio show afterward. So he was doing
15 television in the morning and radio in the
16 afternoon.

17 "QUESTION: You mentioned that he read books.
18 Do you remember him reading things other than
19 books?

20 "ANSWER: I think he read virtually everything
21 he could get his hands on. And he watched a lot of
22 television and things that he could learn something
23 from.

24 "QUESTION: Do you know whether he read
25 newspapers?

2962

1 "ANSWER: I don't know for sure, no.

2 "QUESTION: How about any magazines?

3 "ANSWER: I don't know. I don't recall him
4 talking magazines, but he certainly would have read
5 them if he had them available to him.

6 "QUESTION: Do you recall whether he was up on
7 current events of the day?

8 "ANSWER: Very much so.

9 "QUESTION: Well, why do you say that?

10 "ANSWER: Well, if you started to discuss
11 something, he would know exactly what you were
12 talking about and would add his two cents' worth.

13 "QUESTION: Any subjects in particular come to
14 mind?

15 "ANSWER: Nothing specific.
16 "QUESTION: Did he have an interest in
17 politics that you recall?
18 "ANSWER: I believe that he could tell you
19 what was happening in politics, but I don't think
20 he was particularly interested in who was running
21 and why. But he would have a bent toward that,
22 yes.
23 "QUESTION: How about subjects like medical or
24 scientific issues? Do you recall that being an
25 interest to him?

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1 "ANSWER: I don't recall. It was only things
2 that I was aware of; so I don't recall scientific
3 or medical, no.
4 "QUESTION: Do you ever remember him talking
5 about particular television shows he liked to
6 watch?
7 "ANSWER: He didn't watch typical television
8 shows. Television show like The Practice or
9 something wouldn't interest him. He wouldn't watch
10 it.
11 "QUESTION: How about news-related shows? Do
12 you remember?
13 "ANSWER: He would watch news shows or
14 Discovery Channel or IPS or something like that,
15 anything that had something to do with learning
16 something. And he liked football.
17 "QUESTION: Was he someone who was interested
18 in learning more about things?
19 "ANSWER: Yes, he was.
20 "QUESTION: Why do you say, yes, that you
21 remember him being interested in learning about
22 things?
23 "ANSWER: He was always interested in
24 learning. Anyone that reads as much as he does and
25 can converse on any subject, you better be on your

2964

1 toes if you're going to challenge him on something
2 because you would have to have the knowledge.
3 "QUESTION: Did you observe that happen?
4 "ANSWER: Dozens of times.
5 "QUESTION: Anything come to mind?
6 "ANSWER: Nothing specific. It's just that
7 don't get in an argument with somebody that knows
8 what he's talking about.
9 "QUESTION: Did he seem to have an opinion on
10 lots of subjects?
11 "ANSWER: Well, he was opinionated. But he
12 would listen also if you had something to offer.
13 "QUESTION: I asked whether he was receptive
14 to new ideas and information.
15 "ANSWER: Yes, he would have been.
16 "QUESTION: Would you describe him as a
17 curious individual?
18 "ANSWER: Yes.
19 "QUESTION: Why do you say that?
20 "ANSWER: How could he care about learning
21 these things if he wasn't curious.
22 "QUESTION: Do you remember him having any
23 hobbies or activities that he enjoyed in his spare
24 time?
25 "ANSWER: I don't remember a hobby.

1 "QUESTION: Do you know if he liked to go to
2 the movies?
3 "ANSWER: We went to a movie or two, but he
4 didn't really like movies necessarily. He would
5 rather make them.
6 "QUESTION: During the 1970s did the two of
7 you work on any projects together?
8 "ANSWER: No. Only that I drew the cover for
9 the bridge picture. I drew the art.
10 "QUESTION: And for the second what are you
11 talking about?
12 "ANSWER: The Sunshine Skyway Bridge picture."
13 MR. ACOSTA: He said, "For the record"; and I
14 said "second."
15 "QUESTION: And what was that -- that date?
16 "ANSWER: That was the -- that was "An Act of
17 God," it was called.
18 "QUESTION: Do you remember when that was
19 approximately?
20 "ANSWER: Sorry, I don't.
21 "QUESTION: What would the piece, An Act of
22 God, have to do with? What was the subject matter
23 of -- was that -- what was the subject matter of
24 production?
25 "ANSWER: A ship pilot hit the Sunshine Skyway

1 Bridge and knocked it down. And an attorney by the
2 name of Steve Yerrid defended him and proved that
3 it was an act of God in a hearing, not in court --
4 not in a court.
5 "QUESTION: 'Him' being the captain of the
6 ship?
7 "ANSWER: The pilot was then the captain of
8 the ship, yes, and that man's name was John Lerro.
9 "QUESTION: And is he someone you were friends
10 with?
11 "ANSWER: I met John Lerro a couple of times.
12 I liked him.
13 "QUESTION: Was he someone Mr. Eastman was
14 friends with?
15 "ANSWER: Seemed to be.
16 "QUESTION: And was this piece finished, this
17 production piece, An Act of God, at some point?
18 "ANSWER: It was. The script was finished,
19 but it was never produced.
20 "QUESTION: And do you remember when the
21 script was finished?
22 "ANSWER: No.
23 "QUESTION: And what were you asked to do for
24 the project?
25 "ANSWER: I did the artwork for the cover and

1 a couple other things.
2 "QUESTION: And --
3 "ANSWER: And there was another project
4 called -- I don't remember what it was called, but
5 it was about a murder. And I did the artwork for
6 that too.
7 "QUESTION: So this was another project you
8 and Mr. Eastman were involved in?
9 "ANSWER: It was Eastman's project, and he
10 asked me if I would do the artwork.

11 "QUESTION: And was that the same -- the same
12 with the Act of God, he had asked you to do the
13 artwork for the cover?
14 "ANSWER: Yes, for the script.
15 "QUESTION: After that he asked you to do
16 artwork for another project?
17 "ANSWER: Yes. It was about a girl that got
18 kidnapped. And I don't remember the name of the
19 story, but it was a brilliant screenplay that's
20 tied up with the same people.
21 "QUESTION: Were these projects that he was
22 working on in Florida?
23 "ANSWER: At the same time he was on radio and
24 television and so on.
25 "QUESTION: Would this have been after you
2968
1 visited him in Tampa in the mid to early '70s?
2 "ANSWER: Same time.
3 "QUESTION: Around the same time?
4 "ANSWER: And after.
5 "QUESTION: Maybe even the '80s?
6 "ANSWER: Could have been, yeah. Could have
7 been.
8 "QUESTION: Other than An Act of God and the
9 other project about the murder, you did the artwork
10 for?
11 "ANSWER: Girl that got away, I think it was
12 called.
13 "QUESTION: Girl That Got Away.
14 "ANSWER: I think. I'm not sure.
15 "QUESTION: How often would you see
16 Mr. Eastman during the '70s and '80s?
17 "ANSWER: I don't know. A couple times a year
18 maybe at the most.
19 "QUESTION: Did you talk to him outside of the
20 face-to-face visits?
21 "ANSWER: Phone calls once in a while. And
22 interestingly enough, we never wrote letters back
23 and forth. Sometimes we talked more often than
24 others.
25 "QUESTION: When is the last time you recall
2969
1 the two of you working together on a project?
2 "ANSWER: It would have been a Small Saturday
3 or -- no, it would have been the Bobby Joe Long
4 work. That was probably four or five or three or
5 four years ago.
6 "QUESTION: In the mid-'90s?
7 "ANSWER: Yes.
8 "QUESTION: Are you friends with Mr. Eastman
9 today?
10 "ANSWER: Sure.
11 "QUESTION: Were there times over the years
12 that you have known Mr. Eastman where you saw more
13 of each other?
14 "ANSWER: Of course.
15 "QUESTION: What time period would that be?
16 "ANSWER: Well, the first part of our
17 relationship, because we were right in the same
18 town together at the beginning of that friendship.
19 I don't know of any other time that it would have
20 been.
21 "QUESTION: When you first met Mr. Eastman

22 around 1964, was he a cigarette smoker?
23 "ANSWER: Yes.
24 "QUESTION: Did you ever have any discussions
25 with Mr. Eastman as to why he started smoking?
2970

1 "ANSWER: No.
2 "QUESTION: Any discussions as to when he
3 started smoking?
4 "ANSWER: Not that I recall.
5 "QUESTION: Do you remember any period of time
6 when you knew Mr. Eastman when he had given up
7 smoking cigarettes?
8 "ANSWER: No, I don't recall any time.
9 "QUESTION: Do you remember which brands of
10 cigarettes Mr. Eastman smoked?
11 "ANSWER: I remember Marlboro Flip-Tops
12 because that was mine.
13 "QUESTION: Do you remember when you saw him
14 smoking Marlboro Flip-Top?
15 "ANSWER: Throughout the whole period of 40
16 years that -- I mean, he may have switched to a
17 menthol at some point, but I don't recall even what
18 brand that could have been.
19 "QUESTION: Did the two of you share
20 cigarettes?
21 "ANSWER: Of course, during that period, yes.
22 "QUESTION: And what periods are you talking
23 about?
24 "ANSWER: The first part of our meeting and
25 through the '60s and whenever. I mean, I don't
2971

1 remember it. I finally quit, so --
2 "QUESTION: Do you remember him telling you
3 about any particular quit attempt he made?
4 "ANSWER: No.
5 "QUESTION: Did he ever tell you that he was
6 going to try to quit smoking cigarettes?
7 "ANSWER: No.
8 "QUESTION: Did he ever tell you that he had
9 tried to quit smoking cigarettes?
10 "ANSWER: No.
11 "QUESTION: Did you ever encourage him to quit
12 smoking cigarettes?
13 "ANSWER: No.
14 "QUESTION: After the '90s when you saw quite
15 a bit of each other socially, did you have any
16 recollection --"
17 MR. DENSON: "After the 1960s." Sorry.
18 You're fine.
19 MR. ACOSTA: "QUESTION: After the 1960s when
20 you saw quite a bit of each other socially, do you
21 have any recollection of seeing him smoking
22 Marlboro cigarettes?
23 "ANSWER: Oh, yes. I mean, Marlboro were his
24 key brand. He would go back and forth. But as I
25 recall, he did switch to a menthol for a while, but
2972

1 I don't remember what brand it was.
2 "QUESTION: Do you remember when that was that
3 he switched brands?
4 "ANSWER: No.
5 "QUESTION: Did you ever talk to him about why
6 he switched brands?

7 "ANSWER: No.
8 "QUESTION: At any time, even recently, did
9 you come to learn that Mr. Eastman had quit smoking
10 cigarettes?
11 "ANSWER: No. He could still be smoking.
12 I've only been with him once in the last year or
13 so. But I don't think he is, no. He wasn't
14 smoking then that I was aware of or that I
15 remember.
16 "QUESTION: When you say 'then,' you mean --
17 "ANSWER: The last time I was with him.
18 "QUESTION: And when was that?
19 "ANSWER: A couple years ago, maybe. I spent
20 an evening with him, had dinner. Cooked dinner for
21 him and left.
22 "QUESTION: When was that?
23 "ANSWER: In his home in Tampa.
24 "QUESTION: So this was in 2000 or early 2001?
25 "ANSWER: I'm not at all certain. He was
2973
1 living in the city of Tampa, not on the beach at
2 the time. So he was there for a short time.
3 "QUESTION: Prior to that occasion, around
4 2000, when was the last time you had seen him prior
5 to that?
6 "ANSWER: I really don't know. I don't
7 remember. I'm sorry, I just don't.
8 "QUESTION: That would have been the last
9 time --
10 MR. ACOSTA: Excuse me.
11 MR. DENSON: "ANSWER: That would have been
12 the last time I saw him.
13 "QUESTION: Do you remember during the time
14 you knew him whether he had any kind of cough?
15 "ANSWER: I can only remember a few times that
16 he hacked in the morning and he didn't rinsed the
17 sink out, but I didn't relate it to smoking.
18 "QUESTION: What would appear in the sink
19 after he coughed?
20 "ANSWER: Mucus, stuff that you get rid of the
21 in the morning, phlegm.
22 "QUESTION: When do you remember that
23 happening?
24 "ANSWER: Fort Lauderdale the first time.
25 "QUESTION: That was when were you living
2974
1 there shortly after you were living in Tallahassee?
2 "ANSWER: Yes.
3 "QUESTION: Well --
4 "ANSWER: Well, no, it was after that, five or
5 six years later.
6 "QUESTION: So mid-'70?
7 "ANSWER: Yeah. I was doing some marketing
8 down there.
9 "QUESTION: Do you remember him having a
10 productive cough on more than one occasion?
11 "ANSWER: Well, It just seemed like it, but he
12 could have had a cold, for all I know.
13 "QUESTION: Was it just in the morning?
14 "ANSWER: It was the only time I noticed it.
15 "QUESTION: How many mornings did you notice
16 it on this visit?
17 "ANSWER: Two or three.

18 "QUESTION: Were you concerned?
19 "ANSWER: No, I wasn't concerned. I was
20 irritated because I was the one that rinsed it out.
21 "QUESTION: Did you say anything to him about
22 it?
23 "ANSWER: No, it wasn't the kind of
24 conversation we would have had.
25 "QUESTION: Did you ask him about his health?
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1 "ANSWER: No.
2 "QUESTION: On occasion?
3 "ANSWER: No.
4 "QUESTION: You mentioned there were other
5 times you noticed the cough. Were there other
6 times?
7 "ANSWER: No. I said that people cough, but
8 it would be for any -- I never noticed a cough as
9 related to whether or not it was caused by smoking.
10 "QUESTION: I'm just asking with respect to
11 the cough, aside from smoking. Did you notice the
12 cough on any other occasion --
13 "ANSWER: No.
14 "QUESTION: -- other than the two or three
15 times in the morning when he was staying with you
16 in Fort Lauderdale?
17 "ANSWER: No.
18 "QUESTION: When you and Mr. Eastman
19 socialized together in the '60s here in Cedar
20 Rapids area, would the two of you drink alcohol
21 together?
22 "ANSWER: I would imagine a beer or two, yeah,
23 scotch. I don't know. I don't recall.
24 "QUESTION: Do you remember Mr. Eastman having
25 any particular alcoholic beverage of choice?
2976

1 "ANSWER: No.
2 "QUESTION: Do you remember whether he liked
3 to drink scotch?
4 "ANSWER: No. I mean, I don't know. We may
5 have had a scotch together, but I don't know if it
6 was his drink of preference. I don't recall.
7 "QUESTION: Were there ever times when the two
8 of you would polish off a bottle of scotch together
9 in a late-night discussion?
10 "ANSWER: No. The only time I polished off a
11 bottle of scotch was with my personal attorney here
12 in town, true story.
13 "QUESTION: As opposed to polishing off a
14 bottle of scotch, were there ever times when you
15 and Mr. Eastman would stay up late drinking scotch
16 together?
17 "ANSWER: I would say that we would stay up
18 late drinking, but we would stay up late drinking
19 to have a conversation. So it would not have been
20 to stay up to get drunk together. It would be to
21 stay up to converse together. So the drug would
22 have not been -- or the liquor would have not
23 been -- or the liquor would have been peripheral to
24 the conversation.
25 "QUESTION: Were there times when you saw
2977

1 Mr. Eastman drunk?
2 "ANSWER: I probably saw Mr. Eastman drunk a

3 few times. But I don't recall any specific time
4 that I say, 'Hey, you're falling down; you're
5 drunk,' any more than any of my other friends over
6 the years.
7 "QUESTION: Did you notice when you went out
8 socially whether he would always have an alcoholic
9 drink?
10 "ANSWER: No, I didn't notice.
11 "QUESTION: Do you know how often he would
12 drink?
13 "ANSWER: No.
14 "QUESTION: At any time during your
15 relationship with him did you know whether he drank
16 alcohol every day?
17 "ANSWER: No, I wouldn't have known that.
18 "QUESTION: Was there any particular time
19 where you thought he was drinking too much during
20 the relationship with him?
21 "ANSWER: No, nothing. No specific time.
22 "QUESTION: Do you remember whether it
23 affected his work, his drinking?
24 "ANSWER: No, it surely didn't, not that I can
25 feel.

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1 "QUESTION: Why was it on at least one
2 occasion you thought he had too much to drink and
3 that he shouldn't have been drinking?
4 "ANSWER: I don't know. I said in a general
5 sense I may have felt that, but if you're asking me
6 to be specific and give you reasons, I can't do
7 that. I just can't make something up.
8 "QUESTION: Do you think at times Mr. Eastman
9 has abused alcohol?
10 "ANSWER: I would assume that he has, but
11 that's an assumption, not a fact. I think that if
12 you abuse it -- if you get drunk, you're abusing
13 it, yes.
14 "QUESTION: Why do you make that assumption
15 with respect to Mr. Eastman?
16 "ANSWER: Only that I've seen him intoxicated
17 once or twice. But you said we spent social time
18 together. But going to the fairs with our wives
19 and sitting around drinking in your home, that's
20 different than going to parties together and so on.
21 They weren't party atmospheres, it wasn't
22 purposeful. A drink with dinner in Tampa or
23 something, it was an observation and not that we'd
24 then go out afterwards and chase girls and drink
25 until we were falling down. That didn't happen

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1 ever.
2 "QUESTION: Do you consider Mr. Eastman to be
3 a good friend, don't you?
4 "ANSWER: Yes.
5 "QUESTION: And you believe that he considered
6 you the same way?
7 "ANSWER: Oh, I would assume, sure.
8 "QUESTION: And at any point in time, have you
9 ever recommended to Mr. Eastman that he consider
10 stopping smoking?
11 "ANSWER: No, I've never mentioned it to him.
12 "QUESTION: Did you ever mention to him that
13 he should either cut back or slow down on his

14 alcohol consumption?
15 "ANSWER: No.
16 "QUESTION: Have you ever given Mr. Eastman
17 any advice, health-related advice, as a friend over
18 the past 40 years or so?
19 "ANSWER: Not that I recall.
20 "QUESTION: How is his ability to breathe and
21 speak now as compared to what it was 10 or 15 years
22 ago?
23 "ANSWER: On a scale of percentages?
24 "QUESTION: Well, just your description of
25 what you have observed.

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1 "ANSWER: I don't think he's got 50 percent of
2 the voice left. I doubt very much that he could do
3 a film, a voice over now.
4 "QUESTION: You mentioned a picture or a
5 script that he worked on involving the bridge and
6 an attorney in Tampa named Steve Yerrid.
7 "ANSWER: Yes, sir.
8 "QUESTION: But you remember that the picture
9 was never produced.
10 "ANSWER: No, it got tangled up in legal
11 problems with Mr. Yerrid and some investor from
12 North Carolina or South Carolina or something, and
13 it was never made.
14 "QUESTION: All right. Do you remember a
15 person named Connie May Fowler?
16 "ANSWER: Yes, Connie May Fowler I met one
17 Christmas and then I saw her maybe once or twice in
18 the Tampa Bay area.
19 "QUESTION: Well, let me ask it again.
20 What -- what -- her involvement, and tell me about
21 her -- your observations and things that you saw
22 her do and say about it.
23 "ANSWER: I knew she was involved. Frankly, I
24 felt that her involvement was peripheral and not
25 instrumental. John was absolutely the writer. I

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1 don't know that. I don't know of a word that she
2 put on a piece of paper that would have meant
3 anything to the script.
4 I liked her okay as an individual. I knew
5 that they lived together. She was a student of his
6 at Tampa University or something. And I felt that
7 her contribution was very minimal, to say the
8 least. The conversation that I was part of was
9 with John Lerro, the pilot, and Mr. Yerrid, the
10 attorney, and Mr. McNulty even. I don't recall if
11 Connie May said anything.
12 "QUESTION: Now, you were asked some questions
13 about alcohol. Over the years, I mean, how many
14 times have you and John been together when one or
15 the other of you had a beer or a drink or a glass
16 of wine of some kind? Are we talking about just a
17 few or are we talking about hundreds of times?
18 "ANSWER: Well, certainly, I think hundreds
19 would be a stretch, but somewhere between 20 and 50
20 or 70 I suppose, in that area, that would sit down
21 and have dinner and maybe a glass of wine.
22 "QUESTION: And out of all those times, it was
23 only once or twice that you ever thought he drank
24 too much?

1 "QUESTION: Based upon your own knowledge and
2 observation of John, how would you characterize his
3 career during the time you knew him professionally?

4 "ANSWER: I think he's an enormally(sic)
5 gifted and talented individual and that he has made
6 some marvelous -- and that he's had some marvelous
7 opportunities career wise and that he's done some
8 marvelous things and I'm surprised that he hasn't
9 been widely published.

10 "QUESTION: Do you recall whether -- do you
11 recall whether it was Mr. Eastman's voice --"

12 MR. ACOSTA: I guess that's the wrong page.

13 MR. DENSON: That's it.

14 MR. ACOSTA: That's the end. Good.

15 At this time, Your Honor, the plaintiff would
16 call John Eastman.

17 THE COURT: Very well.

18 Thereupon,

19 JOHN EASTMAN,
20 was called as a witness and, after having been first duly
21 sworn/affirmed to testify the truth, was examined and
22 testified as follows:

23 THE BAILIFF: Speak in a loud and clear voice.

24 THE WITNESS: Yeah, let me be sure it's off.

25 Microphone.

1 DIRECT EXAMINATION

2 BY MR. ACOSTA:

3 Q. Good afternoon.

4 A. Good morning. Good afternoon. I don't know,
5 I just got up.

6 Q. Would you tell the jury who you are and where
7 you live?

8 A. My name is John Eastman and I'm a native of
9 Tampa, Florida.

10 Q. And how long have you lived in Tampa,
11 Mr. Eastman?

12 A. Since 1978.

13 Q. Do you have family there?

14 A. I have -- you have to excuse me. I've been
15 waiting five years to meet you people and it's really
16 got me upset. I'll calm down in a minute

17 Q. Why don't you have a drink of water?

18 A. Well, that may help. I will calm down
19 shortly.

20 THE BAILIFF: Let me get you a cup.

21 THE WITNESS: I've thought too much about it.

22 BY MR. ACOSTA:

23 Q. John, is your family out in the audience?

24 A. Yes, my two sons and my grandson and
25 granddaughter are here. One granddaughter is not, she's

1 too little. And my friends are here.

2 So, I've been here that long and I've never
3 seen --

4 Q. Let me ask you a question: How is your
5 breathing doing today?

6 A. It's okay. It's about normal. This is normal
7 for me except that I'm excited by being here and I'm
8 going to get over that shortly and take command of
9 myself as I've always done.

10 Q. Is -- let me ask you this: Why don't you tell
11 the jury where you grew up?

12 A. I grew up? I grew up in a little town in
13 Iowa. It's called Marion, Iowa.

14 Q. Is it near a city in Iowa?

15 A. It was near -- it's near a town called Cedar
16 Rapids. And Cedar Rapids is an industrial complex. And
17 Marion was looked as the bedroom community of that city.
18 My mother divorced my father in 1939 and moved there
19 because it was close to her parents, who lived in even
20 smaller town. Both of my parents were agricultural
21 people. They came from small towns, my father from
22 Guthrie Center, Iowa, and she from -- an even smaller
23 town.

24 Q. What did your father do?

25 A. My father was a veterinarian. He went to Iowa
2985

1 State College of Veterinarian Medicine and graduated in
2 1919 as a veterinarian at a time when all veterinarians
3 in America practiced large animal veterinary medicine.

4 Q. And is that what he did in Iowa?

5 A. He tried and he -- had an accident in his
6 junior year of college in the summertime. It's a family
7 story, I would like to tell you. It's a wonderful
8 story. He was on a country road driving a mower and he
9 was overrun by --

10 MR. LYDON: Your Honor?

11 MR. ACOSTA: Let me --

12 MR. WALLACE: May we approach?

13 MR. LYDON: -- can we approach?

14 THE COURT: Okay.

15 THE WITNESS: I'm sorry.

16 (Thereupon, the following bench conference was
17 had:)

18 MR. WALLACE: This is not supposed to be
19 theater.

20 MR. LYDON: But more than that, it's a
21 narration, it's inappropriate. I mean, it's a
22 question and answer, as I understand this.

23 MR. ACOSTA: I will interrupt him next time
24 and try to keep him on track.

25 THE COURT: I thought you were about to.

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1 MR. ACOSTA: Well, I was and then --

2 MR. LYDON: Well, I just thought it might help
3 to have some discussion.

4 MR. PARRISH: Ten hours of depositions and
5 IMEs and if he's not ready, we'll be here for a
6 month.

7 MR. LYDON: That's not my point. My point is
8 I just thought it might be good to take a slight
9 interruption and make sure --

10 THE COURT: Compose himself?

11 MR. LYDON: Yeah.

12 THE COURT: Okay. Very well.

13 MR. ACOSTA: Calm down.

14 MR. LYDON: Okay. And then we'll keep to
15 question and answer.

16 THE COURT: You need to be mindful of asking
17 questions and getting direct answers rather than
18 interesting stories.

19 MR. ACOSTA: I will.

20 (Thereupon, the bench conference was

21 concluded.)
22 BY MR. ACOSTA:
23 Q. Are you feeling okay now?
24 A. Yes, thank you.
25 Q. Okay. So it -- at what age were you when your
2987

1 mother and father got divorced?
2 A. Six.
3 Q. And what -- what -- did they split up and go
4 to different -- to different places?
5 A. My father maintained a veterinary clinic in
6 Moline, Illinois. He became a small animal
7 veterinarian.
8 Q. Okay. And then did he at some point move?
9 A. Then to Miami from there.
10 Q. All right. And did you visit him down there?
11 A. Yes, that was sometime following that, yes.
12 Q. And how would you get down to Miami?
13 A. Well, originally by train. I took a train
14 from Marion to Chicago and from Chicago to Miami alone.
15 Q. And what -- what decade are we talking about?
16 A. We're talking the 1940s; 1947, 8, 9.
17 Q. So, how old would you have been then? If were
18 you born -- when were you born?
19 A. I'm talking earlier than that really, 19 -- my
20 father moved down in 1939 or 1940, so my high school
21 years, '43, 4, 5, in those dates.
22 Q. Which did you graduate from high school?
23 A. 1946.
24 Q. And then what did you do?
25 A. I went to college at Iowa State College in
2988

1 Ames.
2 Q. And did you finish there?
3 A. No, no. I tried for veterinary medicine but I
4 failed. I have no mechanical aptitude at all.
5 Q. And so what did you do after that?
6 A. Transferred to the University of Florida in
7 Gainesville and took up a career in journalism.
8 Q. And why were you interested in doing that?
9 A. It was in my genes somehow. I always had an
10 inkling for creative art.
11 Q. Okay. And then what did you do after going to
12 the University of Florida?
13 A. Well, University of Florida scholastic career
14 went very well and I've done some things that -- that
15 attracted some attention. And I did a show in which
16 a -- an entertainer by the name of Jerry Calona who
17 worked for Bob Hope came and was a guest artist on a
18 show that I produced.
19 Q. Okay.
20 A. He suggested that I go to Hollywood.
21 Q. Well, let's go back in time for just a minute.
22 When you were growing up in Iowa, did you
23 begin to smoke cigarettes at some point in time?
24 A. Yes. If I may, I --
25 Q. Well, hang on, let me ask you some questions.
2989

1 A. Sure.
2 Q. Let me -- let me show you some photographs
3 first that have been marked Plaintiff's Exhibit 662A
4 through P. I would like to show them to you and ask you
5 if you would just tell me what they are. There's

6 some -- there's one or two news articles in there as
7 well. Without describing them, are those photos that you
8 gave me?

9 A. Yes.

10 Q. And are they photos of yourself or stories
11 about yourself?

12 A. Yes.

13 Q. And is the first photo a picture of you?

14 A. Yes.

15 MR. ACOSTA: Now, I would like to, Your Honor,
16 publish that first photo on the screen, 662A, I
17 think is the number.

18 THE COURT: Very well.

19 BY MR. ACOSTA:

20 Q. Is that you, Mr. Eastman, when were you a
21 child?

22 A. Yes, that's me at about age 12.

23 Q. Okay. And had you started smoking at that
24 point in time?

25 A. Well, I -- the memory is that I began to smoke
2990

1 corn silk at that time. And that's confirmed because
2 when I mentioned it in an interrogatory, the man
3 questioning said he never heard of anybody doing that.

4 Q. Well, that's all right. Let me ask you this:
5 Did you smoke any tobacco at that point in time?

6 A. I moved from corn silk to butts. I snagged
7 butts from my mother and father. I learned to smoke
8 cigarettes by smoking cigarette butts.

9 Q. And then -- at some point, did you start
10 smoking every day?

11 A. Well, much, much later I -- I finally had my
12 first real cigarette, which was a memorable thing.

13 Q. And when was that?

14 A. That would have been in 1944, I believe.

15 Q. And how old were you then?

16 A. I would have been 14, 15.

17 Q. Were you a junior in high school at that
18 point?

19 A. Yes.

20 Q. Had you smoked before your junior year?

21 A. In terms of butts, but not in a full
22 cigarette.

23 Q. Okay. And do you remember your first
24 cigarette?

25 A. Yes.

2991

1 Q. And where -- where did you smoke your first
2 cigarette?

3 A. A woman whose name is Joanne Crew had a father
4 who was a doctor, the family doctor, Dr. Crew, and when
5 we were altogether in her house, in her basement and her
6 father smoked Chesterfields, which came in a very fancy
7 carton and I admired the carton and held my first
8 package of real cigarettes and smoked one of those, had
9 an unhappy experience with it. I didn't like the
10 cigarette, but I loved the packaging.

11 Q. All right. And did you continue to smoke?

12 A. After that, I began to smoke, yes.

13 Q. Why did you start smoking?

14 A. Well, it would have been 1944, '43. We had
15 had had -- we had gone to war against the Japanese in
16 1941. It was a patriotic country. We were just up in

17 arms about the Japanese. We were -- we were highly
18 patriotic, cigarettes were part of what every serviceman
19 did. My stepfather-to-be smoked, my mother smoked, my
20 father smoked, the community smoked. I didn't regard it
21 as anything other than joining a band.

22 Q. What did you do in your leisure time growing
23 up in Iowa when you were between age 12 and age 14 or
24 so?

25 A. Well, I was an embedded listener to the radio.
2992

1 I couldn't stay away from the radio.

2 Q. And why is that?

3 A. I wanted to be in it. I -- I couldn't believe
4 what I heard. I heard far away places, music coming
5 from big bands, bands that later I would get to know,
6 Duke Ellington and -- and Harry James and then coming
7 from bell ballrooms all over the country.

8 Q. Did you hear anything else on the radio that
9 had anything to do with cigarettes?

10 A. Oh, yeah, one of the favorites -- my favorite
11 shows is one sponsored by Philip Morris. It was a
12 theater off Broadway. I can still hear it: "Johnny
13 calling Philip Morris, smoking downstairs in the outer
14 lobby only, please, Mr. and Mrs. Bert Snyder." I
15 remember it. So, I listened to those things, those
16 shows.

17 Q. Now, do we have a picture there of you when
18 you were in high school and you were smoking on a daily
19 basis?

20 A. Yeah, this is it.

21 Q. Is that it?

22 A. Yes. I had braces in between the two.

23 Q. Pardon?

24 A. I've had braces on my teeth in between the
25 two.

2993

1 Q. Okay. And then after -- after -- what brand
2 do you remember smoking primarily back then in high
3 school?

4 A. Lucky Strikes.

5 Q. And did you smoke other brands as well?

6 A. Probably in the sense that my father smoked
7 Old Golds. My mother smoked Pall Mall, I believe. So, I
8 chose other people's cigarettes from time to time, but
9 my brand, if I had one, which was hard to say I had a
10 brand, but it was -- it would have been Lucky Strikes.

11 Q. Before you graduated from high school, did you
12 smoke in front of your parents?

13 A. I smoked one time in front of my father. I
14 don't believe I smoked in front of my mother. And I
15 don't know why. I don't think she would have hurt me
16 about it, but I didn't. I smoked on a train with my
17 father?

18 Q. On a train with your father?

19 A. Yeah.

20 Q. And was that on one of your trips to Miami?

21 A. We came and went together. And he kind of
22 challenged me, well, you don't have to go out of the
23 room to smoke, you can smoke here.

24 Q. And how old were you then?

25 A. 15.

2994

1 Q. Were you still in high school?

2 A. Yeah, 15.
3 Q. And then after you graduated -- well, let me
4 ask you this: In high school, who all smoked
5 cigarettes, if anybody?
6 A. Everybody. Everybody on my football team
7 smoked with the exception of the quarterback.
8 Q. Okay. And why do you remember him?
9 A. He -- he got on my case about it. He caught a
10 guy named Louie Mider and I smoking cigarettes in the
11 men's room of the Milwaukee/St. Paul and Pacific depot.
12 He peeked in the window. And he chastised us for it.
13 He wouldn't give me the ball for the next game or so.
14 Q. And were you on the football team?
15 A. Yeah. Yes.
16 Q. What position did you play?
17 A. I played full back and line back.
18 Q. And were you successful at it?
19 A. Yeah. Yeah. I was good at it.
20 Q. And did the quarterback have a girlfriend at
21 the time?
22 A. Yeah, she smoked.
23 Q. Was she a friend of yours?
24 A. She was Dr. Crew's daughter.
25 Q. And didn't he like that?

2995

1 A. I think not. That may have been it. I didn't
2 think about it. That might have been it.
3 Q. Now, were there -- do you remember seeing any
4 athletes in advertising back then?
5 A. Everywhere. Everywhere. Everywhere you went,
6 some guy you loved -- you chose up -- you know, when the
7 kids went out to play football, I would be Johnny Lou,
8 Jack, you'll be somebody, you be this guy, you all be
9 that guy. Those people showed up in the ads of all the
10 tobacco companies.
11 Q. Was there anyone in particular that you
12 recall?
13 A. Oh, baseball players. Lou Gehrig was a big --
14 I was a big fan of Lou Gehrig's, I don't think anybody
15 -- Babe Ruth had to be advertised by somebody other than
16 candy bars. They all did.
17 Q. And did that have any impact on you?
18 A. Oh, certainly it did. Movie stars more so and
19 singers and musicians more so, but athletes as much,
20 almost.
21 Q. Well, back in high school, did you go to
22 movies?
23 A. Yeah. I went to movies, but less so than
24 other kids. I wasn't addicted to movies, I was addicted
25 to radio.

2996

1 Q. To the radio?
2 A. To the radio.
3 Q. And after high school, did you get married?
4 A. I married right after high school, at that
5 junction between high school and college that year.
6 Q. And do we have a picture --
7 A. There's picture, yes.
8 Q. -- of you and your wife at the time?
9 A. Betty Christiansen is the woman.
10 Q. And what her name today?
11 A. Randall, Betty Randall.
12 Q. Is that her?

13 A. That's she and I after I had been in the Air
14 Force.
15 Q. All right.
16 A. There's -- there's a picture out of sequence
17 here.
18 Q. Is that the picture?
19 A. This is a picture -- this picture is she.
20 Q. Look up on the screen up there.
21 A. Yeah, that's the picture. That's out of
22 sequence in my --
23 Q. And did Betty smoke?
24 A. That's Betty and myself in Miami Beach.
25 Kitty Davis's Airliner, Miami Beach, 1946,

2997

1 '47, in the --
2 Q. And is that an ashtray in the picture there?
3 A. Sure is.
4 Q. And were you smoking then?
5 A. Sure was.
6 Q. Then --
7 A. And those are Fashion Ella Bombers.
8 Q. When did you first meet Betty?
9 A. Met her in high school, 1945.
10 Q. And when did you get married?
11 A. In the summertime of 1946 -- 7.
12 Q. And then did the two of you leave Iowa?
13 A. Yes. We went to Iowa State and then we went
14 from Iowa State to Gainesville.
15 Q. And when you were in Gainesville, did you
16 participate in theatrical events there?
17 A. Yeah, I was an actor at -- for Florida
18 Players. I did a lot of shows for Florida Players.
19 Q. Did the University of Florida have a -- a
20 newspaper at that time?
21 A. Florida Alligator, yes.
22 Q. And did you do any writing for that paper?
23 A. I had a column in the paper.
24 Q. And do you remember where the paper itself
25 came from? Was it --

2998

1 A. I had a -- you're asking about The Orange
2 Peel, which is a college humor magazine, and I was the
3 editor of it. And the covers of that magazine was --
4 were provided by the scholastic division of Camel
5 cigarettes. They ran an ad on the -- you've got a Camel
6 ad on the back of every one of your magazines. And they
7 supplied the cover, which was very advantageous
8 commercially, financially.
9 Q. And then after the University of Florida --
10 were you smoking at that time?
11 A. At the University of Florida?
12 Q. Yes?
13 A. Yes.
14 Q. And how much were you smoking there?
15 A. I was into a pack a day, no question about
16 that.
17 Q. Can I come up and get those photos from you
18 for a second --
19 A. Sure.
20 Q. -- so I can see what we've got next.
21 A. Oh, I see.
22 Q. There's another photo of you sitting on a car.
23 Can you tell us what -- what that one is all about?

24 A. Well, that's the 1941 Mercury that my father
25 gave me to drive home to see my mother and -- and say
2999

1 goodbye to my girlfriend and return to go to the
2 University of Miami. And I circumvented the whole thing
3 by going to Iowa State College.

4 Q. Instead?

5 A. Instead.

6 Q. And is that a cigarette in your hand there?

7 A. Yes, it is.

8 Q. And then what is this picture of here?

9 A. That's a play bill for a show at the
10 University of Florida called Liliom, which is a famous
11 Broadway musical. But the State play was called Liliom
12 and it's got another name for the theatre.

13 Q. And what were you doing in that production?

14 A. I was the star. I played the role of a
15 carnival worker who falls in love with a girl, et cetera
16 et cetera.

17 Q. Is that you on the cover there?

18 A. It is.

19 Q. And are you smoking a cigarette?

20 A. I am.

21 Q. And is the woman next to you smoking a
22 cigarette?

23 A. Yes, she is.

24 Q. When you were at Gainesville, what was the
25 percentage of students there smoking?

3000

1 A. Oh, I -- I suppose 50-50. I suppose
2 50 percent of the students smoked. I could only guess
3 at that. I don't know.

4 Q. All right. Do you remember if it was an
5 uncommon thing or common thing?

6 A. Common thing.

7 Q. Then what did you do after leaving the
8 University of Florida?

9 A. As I said, Mr. Calona said come to California,
10 I think I can find you a job. So without hesitation, I
11 took off. Betty went back to her mother -- or my mother
12 in Iowa to say while I saw if I could gain anything in
13 California. I wanted to leap immediately into show
14 business. I thought I could. He thought I could.

15 Q. And did you -- whereabouts in California did
16 you go?

17 A. Hollywood and Vine, specifically. That's
18 where I heard --

19 Q. And where did you stay when you went out to
20 California?

21 A. A Place called the Harding Hotel, a
22 block-and-a-half from Hollywood and Vine.

23 Q. And then what did you do? Did you get a job?

24 A. Well, I went out looking for jobs and went to
25 see Mr. Calona and bugged him and stayed on his case and

3001

1 tried to get him to help me. But he was sponsored by
2 Pabst beer, and he was on his last legs, too, and I
3 didn't know that.

4 Eventually I applied for a job -- everywhere
5 you go. I applied for a job at The Los Angeles Times, a
6 job at Disney World, a job here and there. But the job
7 I really wanted was the one I got, which is an usher at
8 CBS radio.

9 Q. Well, let's check something out. Was there a
10 Disney World back then?
11 A. Walt Disney. Walt Disney Productions.
12 Q. Okay. And did you find a job?
13 A. Yes, CBS Hollywood.
14 Q. And what did you do?
15 A. I was an usher.
16 Q. And where were you an usher?
17 A. Oh, on all those wonderful shows that I heard
18 in Iowa and loved.
19 Q. And do you remember one in particular that you
20 got --
21 A. Art Linkletter's House Party.
22 Q. Okay. Any others?
23 A. Lux Presents Hollywood, Lux Radio Theatre.
24 Q. OKay. Any others?
25 A. Dinah Shore, Jack Smith, Jimmy Simms. And I
3002
1 was an usher on -- I was in charge -- don't say usher, I
2 was in charge of seat cushions on the very first I Love
3 Lucy Show ever.
4 Q. Now, the very first I Love Lucy Show, do you
5 remember who the sponsor was?
6 A. Lucky Strikes.
7 Q. And did that change at some point?
8 A. Oh, yes, I think by that time -- they moved to
9 something else. Either Lucky Strikes went out and
10 someone else took them on. I don't know, but I was
11 there the day it was sponsored by Lucky Strikes.
12 Q. All right. And then where -- what happened
13 next after your stint in Hollywood?
14 A. I was drafted. I got a draft notice to my
15 father's home in Miami. Rather than be drafted, I
16 enlisted in the Air Force.
17 Q. And did you get any awards while you were in
18 the Air Force?
19 A. I won an award for -- four courage under fire
20 in basic training. Basic training is supposed to be
21 very difficult and it is. And I decided there were only
22 two ways to win; be better than everybody else or leave.
23 Q. So what did you do?
24 A. I was better than anybody.
25 Q. And did you get the award for that?

3003

1 A. Yeah, I did.
2 Q. And then what happened?
3 A. Well, then I was assigned to United States Air
4 Force security service for the purposes of becoming a
5 Russian language student or perhaps some other aspect of
6 security. And I was no good at English -- transferred
7 the English to Russian. I wasn't any good at it, so I
8 didn't do that. I went instead to a media school in
9 Fort Slocum, New York, which was a school for
10 information specialists.
11 Q. Okay. And did you continue smoking in the Air
12 Force?
13 A. Yes.
14 Q. About how much were you smoking at that point
15 in time?
16 A. Continued to smoke a pack, a pack or more a
17 day. I had no great stress, so I was smoking a pack a
18 day.
19 Q. And then was Betty with you in the Air Force?

20 A. Yes.
21 Q. And we had the deposition read that mentioned
22 something about a lung problem she had?
23 A. Oh, yes.
24 Q. Did you know about it at the time?
25 A. Well, I was with her, so I took her to the

3004

1 hospital.
2 Q. And to your knowledge, did it have anything to
3 do with smoking?
4 A. No, nothing to do with smoking.
5 Q. Then what happened after the Air Force?
6 A. Well, I went home to Iowa because my mother --
7 she had had a problem with their lives and needed me.
8 So, I went home and solved all our problems.
9 Q. Did you get a discharge out of the Air Force?
10 A. Yes, I did.
11 Q. Was it an honorable discharge?
12 A. Yes, it was an honorable discharge.
13 Q. And then you went back to Iowa, and what did
14 you do there?
15 A. Well, I said I better go to work and do
16 something with my life. I could have gone back to Los
17 Angeles. I didn't realize it, but CBS had a hire back
18 policy; if you left them during the war, they had to
19 hire you back. But not only CBS network, but CBS
20 affiliates. And so, I went to the Cedar Rapids
21 affiliate of CBS, WMT.
22 Q. What war was going on when you were in the Air
23 Force?
24 A. Korea.
25 Q. And when did it get over?

3005

1 A. It was over in 1954 or 5, I think.
2 Q. So, anyway, back in Cedar Rapids, what job did
3 you wind up taking?
4 A. I was hired as -- at WMT TV, Cedar Rapids, as
5 a floorman, which is the guy that cleans up and does
6 whatever has to be done.
7 Q. And from there, where did you go?
8 A. Well, I was only there about four or five
9 weeks and I applied for a job as a weatherman.
10 Somebody -- there was an opening for a weatherman, so I
11 applied for the weatherman's job and got it.
12 Q. Do we have a picture of you doing that?
13 A. I think so. That's an Air Force picture.
14 That's Betty and I in the Air Force.
15 And that's --
16 Q. There we go.
17 A. That's the weather show.
18 Q. And is that you in the --
19 A. That's me.
20 Q. -- white short sleeve shirt there?
21 A. That's right.
22 Q. About what year is this?
23 A. 1953.
24 Q. And how long were you the weatherman there?
25 A. Until I resigned. I went -- that job got me

3006

1 noticed on a radio station in Iowa City. I was going to
2 school. I also entered the University of Iowa to go to
3 school in mass communications.
4 Q. All right. Did you take courses in mass

5 communications?
6 A. Yeah, uh-huh (indicating affirmatively).
7 Q. And what was your thought process there? Had
8 you always --
9 MR. LYDON: Object to leading.
10 THE COURT: Sustained.
11 MR. ACOSTA: I have --
12 At one point, had you wanted to be a
13 veterinarian?
14 MR. LYDON: I object to leading.
15 THE COURT: I'll allow it. Go ahead.
16 THE WITNESS: Well, I always -- I can help --
17 I can help you here to understand it. At no point
18 up until now had I done or had -- had the courage
19 to admit what I wanted.
20 BY MR. ACOSTA:
21 Q. And so why did you take university courses at
22 Iowa then when you were doing the weatherman show?
23 A. I wanted to learn how to write.
24 Q. All right.
25 A. And nobody taught it.

3007

1 Q. Then did you do other things at WMTV other
2 than the weather?
3 A. No. At that point they excused themselves and
4 they let me do the weather and I didn't have to carry
5 anymore hay to the hay shows.
6 Q. Did you do any commercials while you were
7 there?
8 A. Oh, yes, I did that.
9 Q. Do we have a picture of a commercial you did?
10 A. Oh, yes, I did that. Those were jobs that
11 came to you and you got to do them. That's Walt's
12 Corner. That's a how-to-fix-it show.
13 Q. And were -- what was your job?
14 A. I read what was on the copy to read about what
15 it contained -- what was contained within a film show.
16 The show -- somebody else did all the work and I acted
17 as if I knew all about it, which, in fact, I didn't.
18 Q. Did they have taped commercials back then?
19 A. No, they were on kinescope or they came on
20 film.
21 Q. Were the shows taped?
22 A. No. They were on kinescope. That's a --
23 that's a disk that runs.
24 Q. All right. Did you do live television?
25 A. Yes, all of it was live.

3008

1 Q. That's what I was trying to find out.
2 A. Yeah, all live.
3 Q. And was that live when this picture was taken?
4 A. Yes.
5 Q. And were there color TVs back then?
6 A. I think so, yes.
7 Q. Color or was that black and white?
8 A. By then I think it was color, but, you know, I
9 don't know. You know, it had no importance to me,
10 really.
11 Q. All right. Then from Iowa, where did you go
12 next?
13 A. Well, I went to Iowa City and Iowa State and
14 to the University of Iowa in those three occupations. I
15 was on the radio in the afternoons.

16 Q. Were you on WKRG?
17 A. KXIC.
18 Q. KXIC?
19 A. A radio station. Because they saw me on
20 television --
21 Q. All right.
22 A. -- they hired me for radio.
23 Q. We have another picture. Can you tell us what
24 this is of?
25 A. Well, that's much later. That's KRG in

3009

1 Mobile, Alabama.
2 Q. Oh, in Mobile, Alabama.
3 A. Yeah. By that time, I had divorced Betty, if
4 you want me to leap all that distance.
5 Q. No, we'll get there in a second.
6 After doing the work at -- the TV station in
7 Iowa, where did you go next?
8 A. To tell the story, I had three jobs.
9 Q. Just tell us where you went next, if you
10 can --
11 A. My wife and I separated. She remained in Iowa
12 because she did not want to go back to Hollywood. That
13 was in my -- my deepest desire was to go back to
14 Hollywood and resume the career and try to find out how
15 to write for motion pictures or the theatre or whatever.
16 And I thought that was being done in Hollywood. And
17 that's -- Hollywood and Vine was where I had to go. She
18 understood that.
19 Q. So did you do that?
20 A. Not directly, I went to another major market.
21 I thought I could get a job in Miami and I thought in a
22 major market, unlike Cedar Rapids, I could advance to
23 California more quickly.
24 Q. Were you familiar with Miami?
25 A. Yes.

3010

1 Q. And what did you -- what job did you find down
2 there?
3 A. I found another radio job on the basis of a
4 radio job. The same radio station that Larry King
5 started in, I started in at the same time.
6 Q. Okay. And was that WINZ?
7 A. No, WAHR.
8 Q. Okay. And how long were you there?
9 A. We were there -- I met Marilyn there. Marilyn
10 and I worked there and then from there, we went from WHR
11 Miami to -- Miami Beach to Jacksonville, WJHP TV in
12 Jacksonville.
13 Q. All right. And who is Marilyn?
14 A. Marilyn Eastman -- became my wife, Marilyn
15 Johnson.
16 Q. Okay. And is she the mother of your children?
17 A. Yes.
18 Q. And so then why did you go to Jacksonville?
19 A. There was a better job in television and we
20 got it together.
21 Q. And then where did you go from there?
22 A. She stayed -- we were there for about eight
23 months. I did the show, the American Bandstand, the
24 same thing that Dick Clark did.
25 Q. And what are you smoking at this time?

3011

1 A. I'm still smoking Lucky Strikes.
2 Q. And --
3 A. And she's smoking whatever she smoked.
4 Q. All right. And can you give us some time
5 frame as to when were you in Jacksonville?
6 A. Well, we must be to 1956, '57.
7 Q. All right. And how much were you smoking?
8 A. Pack, pack and a half a day.
9 Q. At that point in time what did you think about
10 cigarettes?
11 A. I just smoked them. I thought they were part
12 of my life.
13 Q. And did you have any concerns about the
14 cigarette?
15 A. No. I didn't.
16 Q. By that point in time had you seen any
17 newspaper stories or anything like that indicating that
18 cigarettes might be linked to cancer?
19 A. Yes, I had begun to understand that people
20 were saying that tobacco had an affect on your health.
21 I began to recognize that.
22 Q. What did you think about it?
23 A. Well, I thought -- it was probably true, I
24 didn't know. I wasn't sure. I thought -- I thought
25 there was a reason to question it. But -- at the same

3012

1 time was very much a customer of tobacco. I think you
2 must understand when I say I worked for Lucky Strikes on
3 that show, I was always their customer. And so I
4 listened -- I listened to everything that tobacco had to
5 say first. And there was a preponderance of it, there
6 was more being said in favor of tobacco than there was
7 against tobacco. So if you can say anything, I was a
8 voter. I voted for tobacco, I voted to give them every
9 opportunity, if there was something wrong with tobacco
10 to fix it.

11 Now, I don't believe I heard that they were
12 going to fix it at that time. But I remember that that
13 was my attitude. If there were anything wrong with
14 tobacco, to those people who were saying there was I
15 trusted tobacco to fix it. I relied on it. That was my
16 attitude.

17 Q. Okay. And what caused you to have that
18 attitude?

19 A. It seemed the healthiest attitude to have. It
20 seemed the preponderance of information was on their
21 side. They manufactured it, they knew -- the things
22 that I've learned since then are not applicable to what
23 I thought at that time.

24 Q. Where did you get the information from?

25 A. Must have read it. It must have been in

3013

1 publications. It must have been in something that I saw
2 or heard that told me that there were people who weren't
3 worried about it.

4 Q. Now, where did you get the other information?
5 The information that made you think that the
6 preponderance was that it was okay?

7 A. Well, I'm going to use a phrase that you won't
8 like, the flow and flux of information, it's just there
9 every day, it is today, having to do with our situation
10 in Iraq, there's a flow and flux of information that
11 passes us continuously in this society, it's called

12 propaganda, it's called information, it's called news,
13 it's called all sorts of things. It's the flow and flux
14 of yes and no, positives and negative information on
15 every subject.

16 Q. Did you see anything in magazines or
17 television or newspapers or anything like that, relating
18 to smoking and health?

19 A. Are we working toward the first Surgeon
20 General remarks, I'm not sure, Howard, I can't tell you.

21 Q. We're just talking about the mid 1950s when
22 you are still smoking Lucky Strikes.

23 A. Right.

24 Q. At that point in time, where were you getting
25 your information about things in general?

3014

1 A. From the -- from the radio and the television
2 and the reading materials that passed by me.

3 Q. What kind of reading materials would pass by
4 you in your --

5 A. Daily.

6 Q. -- our occupation?

7 A. Daily newspapers, magazines, Readers Digest, I
8 suppose, maybe. I read it very infrequently. I don't
9 know why I would read that, but there seems like there's
10 something appeared in Readers Digest about that time
11 period that had something to do with it, but I don't
12 know what it was.

13 Q. All right, sir. So, how long -- how long --
14 after Jacksonville where did you go?

15 A. After Jacksonville, Marilyn stayed in
16 Jacksonville, I was fired. But I wasn't really -- I was
17 fired but at the same time told where to go to get a
18 job. A new CBS affiliate was signing on in Mobile,
19 Alabama. And I was signed to go there. I was sent
20 there to take over as news director of a television
21 station in Mobile -- and I went.

22 Q. Why is it that you moved around so much up
23 through the late '50s?

24 A. That's what broadcasters do. It's a circus.
25 If you take your best opportunity and you go, and you

3015

1 take your best opportunity and you go. If you settle
2 down, I could have had a library named for me in Cedar
3 Rapids if I wanted to be a sports caster or a
4 weatherman. You see, you have to just take the
5 opportunity and learn what it is about that opportunity
6 that that has in it what you may be best at, what you
7 may do well. And I was always looking for the part of
8 me that said creativity, that said I can write it, I can
9 create it, I can make it. That's a part of the weather
10 and it's a part of news and it's a part of sports. But
11 that's not something that you set down in concrete over.

12 Q. Where were your kids born?

13 A. Oh, where were they born? They were born in
14 Hollywood, Florida.

15 Q. And their names?

16 A. Michael and John.

17 Q. All right. They're sitting out there?

18 A. Uh-huh (indicating affirmatively).

19 Q. And did -- did your wife Marilyn -- was she a
20 smoker?

21 A. Yes.

22 Q. And did she smoke with the kids when they were

23 young?
24 A. I think so.
25 Q. Did you smoke around them?
3016
1 A. Yes.
2 Q. Did you feel there was anything wrong with
3 that?
4 A. No.
5 Q. And then I guess you went back to --
6 A. We have to go through Mobile to get to Miami.
7 Q. Okay. Let's go through Mobile.
8 A. We have to go through Mobile.
9 Q. What did you do in Mobile?
10 A. Well, I was news director in Mobile.
11 Q. Okay.
12 A. And Marilyn came there and we had not yet
13 married.
14 Q. Is that what this picture is here?
15 A. That's Mobile, Alabama, as the news director.
16 Q. All right. And about what years were -- were
17 those?
18 A. We're talking 1959 to 1960, is that right?
19 Q. Do you remember what was going on in the world
20 back in 1959?
21 A. Yes, I sure do.
22 Q. What was going on in the world?
23 A. We were having race riots. We were having
24 great problems and that's what caused me my difficulty.
25 That was one of things that was going on. John Kennedy
3017
1 was going to get assassinated there were great problems
2 with the -- Vietnam was coming on. All those things,
3 but my problems were racial.
4 Q. What happened?
5 A. The Moray's of the Mobile, Alabama --
6 MR. PARRISH: Objection.
7 MR. ACOSTA: Is there an obligation?
8 MR. LYDON: Relevance.
9 MR. WALLACE: Relevance.
10 MR. ACOSTA: All right.
11 THE COURT: Sustained.
12 BY MR. ACOSTA
13 Q. In any event, Mr. Eastman, was there -- do you
14 remember anything about smoking and health coming up at
15 that time?
16 A. While I was in Mobile, Alabama?
17 Q. Right.
18 A. No.
19 Q. Did your show have any cigarette company
20 sponsors?
21 A. No.
22 Q. Did you see cigarette advertising on the
23 television at that time?
24 A. Well, I know that it was removed. But I don't
25 know if it was at that time or not. It had been on, I
3018
1 know that. There may have been a time when it was
2 removed and that could have been during that time, I'm
3 not aware. I'm not sure.
4 Q. All right. Now, after Mobile, where did you
5 go?
6 A. Miami.
7 Q. And what do you do there?

8 A. I got a job on a 50,000 watt radio station,
9 WINZ.
10 Q. And Do we have a picture -- by the way are you
11 smoking in this picture here, WKRG?
12 A. Yes.
13 Q. Is that a cigarette in your hand?
14 A. Yes, it is.
15 Q. And then is this WINZ?
16 A. It is.
17 Q. And is that a cigarette in your hand there?
18 A. It is.
19 Q. And what were you doing at WINZ?
20 A. I took over the midnight to 5:00 in the
21 morning all night radio show on WINZ which was the
22 number 1 personality radio station in that market. And
23 it was really rivaling WNEW New York. It was a
24 terrific --

25 Q. What was WNEW in New York?

3019

1 A. It was the number 1 personality radio station
2 in America.
3 Q. And you mentioned Larry King a little while
4 ago, is this where you met Larry King?
5 A. Larry King was on another radio station, WYOD,
6 doing another thing. Doing what he does now, doing
7 talk.
8 Q. Were you and he friends back then?
9 A. Yes.
10 Q. And at some point did you and your wife
11 Marilyn end your marriage?
12 A. Yeah, but let me get -- how it goes. We
13 continued on for five years, the boys were both born. I
14 was on INZ. I did very little other television there
15 because it was an all night job.
16 I tried to do the writing, I was trying to
17 write and learn how to write and continue to write, but
18 I didn't succeed there. And I was fired.
19 Q. How come?
20 A. I got in a brouhaha, a beef with a cab
21 driver --
22 MR. PARRISH: Object to the relevance.
23 MR. WALLACE: Relevance.
24 THE COURT: Sustained.
25 BY MR. ACOSTA:

3020

1 Q. So what did you do after that?
2 A. What did I do after that? I went looking for
3 jobs in New York. Trying again to find a job in New
4 York, looking for friends to help me. Marilyn stayed in
5 Hollywood. Came back shortly thereafter, did some
6 jobs -- did a job in -- in Fort Lauderdale and
7 Hollywood. There were two radio stations in Hollywood
8 that hired me to do radio shows from night clubs.
9 I went in and put in a show, had a salesman
10 who sold spots for me to various clients and we tried
11 from two different locations in Hollywood and
12 Fort Lauderdale to do these shows. Was successful for
13 about a year, but not too much.
14 Marilyn and I were drifting apart. I was
15 living in Hollywood and Fort Lauderdale and she was
16 living in Hollywood. It wasn't good for either of us.
17 Q. So what happened?
18 A. What?

19 Q. So what happened? If it wasn't go for either
20 of you what did you do?
21 A. Well, ultimately I went on to California. I
22 said I'm going to go to California again, give it a try.
23 And she packed my duffle bag and I left. Took me out to
24 Alligator Alley and I hitchhiked to Los Angeles, back to
25 Hollywood and Vine.

3021

1 Q. Were there interstates back then?
2 A. No. Not of any great consequence. It was
3 hard rock hitchhiking, but it wasn't as dangerous, it
4 wasn't dangerous, it was just hard work.
5 Q. And were you -- at that point in time were you
6 still smoking Lucky Strikes?
7 A. No, at that time I think I had switched to
8 Marlboro.
9 Q. What was the difference between Marlboro and
10 the Lucky Strike?
11 A. I think filters had entered into the picture.
12 It might have been something that we were discovering in
13 Mobile or those times, filters, I remember Marilyn now,
14 I can go -- yes, filters because Marilyn had brought up
15 filters and Kools. And she brought it up as a safety
16 factor and something to pay attention to. She may have
17 switched to Kools. I may have then switched to
18 Marlboro.
19 Q. Okay. And then how long did you smoke
20 Marlboro?
21 A. Oh, I continued to smoke Marlboro for the
22 remainder of my life until the very late years. And
23 somewhere in the 70s or 80s I began to switch to
24 Benson & Hedges.
25 Q. All right. Now, at some point after you and

3022

1 Marilyn got divorced, did you marry someone else?
2 A. Well, it goes a little more -- with a little
3 more difficulty than that. When I was hitchhiking to
4 California --
5 Q. Okay, I understand that, but just want to find
6 out first if you married somebody else?
7 A. Ultimately I did, yes.
8 Q. Okay. And who was that?
9 A. That was Alene King.
10 Q. All right. Was she previously married to
11 Larry King?
12 A. Yes.
13 Q. And how long after you were hitchhiking out to
14 California was it that you met Alene King?
15 A. Oh, after I hitchhiked to California I
16 returned to Pittsburgh, Pennsylvania, to receive
17 treatment for testicular cancer.
18 Q. Before I ask you that, there's a picture here
19 that I need you to identify for us. Who is in this
20 picture?
21 A. That's Marilyn. That's Marilyn and I in
22 Mobile.
23 Q. That's not a -- pretty dark on that screen,
24 but -- maybe I can just hold it up and you can see it
25 better. This is 662K.

3023

1 And then how long were you out in California
2 before you came back and married Alene King?
3 A. I was in California long enough to go and take

4 a job in Pittsburgh.

5 Q. In Pittsburgh?

6 A. And -- and I was general manager of a FM radio
7 operation in Pittsburgh, Pennsylvania, when I got an
8 offer to go back to Miami, the radio station that had
9 fired me previously, I thought mistakenly fired me.
10 They hired me back, increased my salary, gave me
11 privileges and I took it. Went back to Miami. Lasted
12 about three or four months on that all night radio show
13 again and realized I had made a mistake, I didn't want
14 to be there.

15 In the course of that met Alene King who was
16 working at the Playboy bunny and who realized that what
17 she was doing and what -- we both agreed what we were
18 doing was something that we didn't want to do. We were
19 at a dead end. And we said we would change our lives
20 and so we went away to Iowa, back to my home in Iowa,
21 and --

22 Q. All right.

23 A. And married.

24 Q. And did your sons live with you at any point
25 after that?

3024

1 A. My sons had gone to Pittsburgh. Marilyn
2 had -- I had gone to Pittsburgh and set down the roots
3 there necessary when Alene and I returned to Marion. I
4 got ahold of Marilyn and the boys and Marilyn agreed to
5 go to Pittsburgh and establish herself through friends
6 of mine, get a job, so that she would be able to bring
7 the boys to her. That took about a year.

8 She did so, boys came and stayed with Alene
9 and I at my mother's house. And we start a new life and
10 a new corporation and a new existence.

11 Q. Did you remain on -- have you remained on good
12 terms with Betty and Marilyn?

13 A. Yes.

14 Q. And how about Alene King?

15 A. Yes.

16 Q. How long were you and Alene King married?

17 A. About three and a half years.

18 Q. And how much were you smoking there in the --
19 in the mid 60s?

20 A. I was getting around to two packs a day.

21 Q. And was this about the time that you met
22 Mr. Morrissey?

23 A. It would have been, yes.

24 Q. And then after that, what happened in terms of
25 your next employment?

3025

1 A. Well, my next employment was self-employed. I
2 started a company called The State's History,
3 originally, what he called the Iowa Story was really a
4 corporation, State's History, Inc. He was a little
5 short about it. We made five minute radio programs,
6 five days a week, a year long. So multiply that by --
7 that's how many we made. And then we did them also for
8 television. So we had the same shows running on radio
9 and television, all five minutes in length for a year in
10 five markets. So we were very busy producing this
11 stuff, it was quite successful.

12 Q. How did you learn to do that?

13 A. Well, it's not very difficult. It's to do
14 something right once and duplicate it.

15 Q. Now in the mid 1960s, do you remember when a
16 caution label went on the cigarette package?
17 A. Yes, I do. I do. I do.
18 Q. Do you remember what it said?
19 A. It said cigarettes may be dangerous. Or may
20 be -- hazardous to your health. First may be hazardous
21 to your health.
22 Q. At that point in time, did you think
23 cigarettes were dangerous?
24 A. I began to think so, yes. Began to worry
25 about it.

3026

1 Q. Pardon?
2 A. I began to seriously worry about it.
3 Q. And did you do anything about it?
4 A. Well, I -- I answered that I -- in my first
5 deposition I was terribly arrogant --
6 Q. Well, you don't need to talk about that. I
7 just want to find out right now what you did about it.
8 A. I tried to quit.
9 Q. And how did you do that?
10 A. I just went cold turkey. I just did what
11 everybody told me was so easy to do, I just didn't do
12 it.
13 Q. All right. About what time was that? Was
14 that what -- what decade are we talking about that you
15 began to do that?
16 A. In the late 1950s, middle 1950s.
17 Q. The '50s?
18 A. Or 60s. About the time we get back to Iowa,
19 yes.
20 Q. When are you back -- you're back in Iowa,
21 you've met Mr. Morrissey, you've done the Iowa story.
22 Now what are you doing next?
23 A. I'm going to sell the Fugitive next.
24 Q. All right. And then after the Fugitive what
25 did you do?

3027

1 A. Eastman and Associates and a whole number of
2 films like the ones he was discussing.
3 Q. Do you remember, you know, what decade it was
4 that you thought cigarettes, you know, when you first
5 started thinking that cigarettes were dangerous?
6 A. I began to think that cigarettes were
7 dangerous -- I wish I could tell you that it doesn't
8 come on a person like that and didn't come on me as a
9 date. It came on me as a general feeling that was just
10 responsive to that flux and flow I tried to tell you
11 about earlier.
12 Q. Well, when did you get to the point --
13 A. Somewhere in the 1960s flowing out the 1950s,
14 I began to believe. So in the 1960s, I began to get a
15 handle on the fact that this was something that I should
16 watch for. That perhaps this was something dangerous.
17 Q. Okay. And is it at that point in time that
18 you began to try to quit?
19 A. Yes.
20 Q. All right. And then how many times did you
21 try to quit?
22 A. Well the first time I tried to quit was just a
23 personal private put them down and stop.
24 Q. Did it work?
25 A. No.

1 Q. What happened after that?

2 A. I just -- I was dismayed at my inability to do
3 so. I won that American Spirit honor medal for being so
4 goddamn courageous, excuse me, so courageous. I wasn't
5 courageous and I didn't like it. So I just didn't try
6 again right then, I just put it away. Then I begin
7 doing it a few other times. I just tried not to smoke.
8 And I wasn't successful beyond a few hours, beyond a
9 day, beyond a few hours. I wanted to smoke.

10 Q. What happened when you didn't have a
11 cigarette?

12 A. I got all upset with -- my system got upset, I
13 nervous, I was anxious, I was angry, I was
14 discombobulated.

15 Q. Do you remember when there came a time that
16 there was a warning label on the cigarette package?

17 A. I know that it occurred.

18 Q. All right. Did that --

19 A. Well, that --

20 Q. -- cause you to think anything differently?

21 A. It began to make me began to feel that my
22 trust in the tobacco companies that I had expressed to
23 you earlier was coming true. The tobacco companies had
24 decided if there was something wrong with it they would
25 fix it. I could rely on them. They were going to save

3029

1 this. This must have been something around the Frank
2 Statement that you put on the screen today, whatever
3 date that was.

4 Q. Do you remember ever seeing that?

5 A. I suppose I did. I don't know how I could
6 have missed it.

7 Q. Now, we're up to around 1970 at this point.
8 What are you doing in your career at this point?

9 A. I'm in Iowa. I'm doing the films that we've
10 discussed. I've written for the Fugitive and sold it.

11 Q. What was the Fugitive?

12 A. The Fugitive was the number 1 broadcast in the
13 country at that time, Drama Company with, a David
14 Jensen. And it was done by Quinn Martin productions and
15 it was a big show.

16 Q. And then did that cause you to do anything in
17 your career?

18 A. Well, I went to Hollywood. He invited me out
19 there and said we bought it in the mail. Who?

20 Q. I didn't say anything.

21 A. Quinn Martin said come to Hollywood, I'll give
22 you three more scripts. When you do something like
23 this, you get an agent. You had been looking for an
24 agent all these years, suddenly you get an agent that
25 day and you get options to do more scripts than the one

3030

1 you sold. And you join the Screen Actors Guild, which
2 is the number 1 -- or Screen Writers Guild, which is the
3 agency that controls all of Hollywood writing.

4 Q. Did you become a member of the Screen Writers
5 Guild?

6 A. Yes, I did. In one afternoon I did it all.
7 That's what you asked in your question, if anybody
8 understands why you go up and down, why you go from job
9 to job. In my business that's the way it happens. It
10 isn't like medicine or law or anything else. My

11 business it happens one day, they give it to you.
12 Q. And do you get paid royalties for the Fugitive
13 work?
14 A. Yes.
15 Q. Do you still receive a check?
16 A. Last week, 36 bucks. But that's not the
17 point. My wife left me now.
18 Q. Which one?
19 A. Alene.
20 Q. All right.
21 A. The girl I promised we would go home to Iowa
22 we would never go for the Playboy anymore, we wouldn't
23 do any of this stuff, we would be nice people, we'd be
24 calm. I went to Hollywood, I got in the Writers Guild.
25 I got all this acclamation in one day and I call home

3031

1 and she's left.
2 MR. ACOSTA: Why don't we leave it there for a
3 minute if it's okay with the Court. I'm getting
4 the feeling that Your Honor's ready for the
5 afternoon break.
6 THE COURT: I think it's about that time. So
7 let's take our afternoon recess at this time and
8 plan on starting up about 3.
9 THE BAILIFF: All rise please. Court will be
10 in recess until 3 according to the courtroom clock.
11 (Whereupon, recess was taken at 2:42 p.m.)
12 THE BAILIFF: All rise please. Court is back
13 in session.
14 THE COURT: Let's bring the jury back.
15 Mr. Acosta, do we have some idea about the
16 timing of the testimony?
17 MR. ACOSTA: I'm -- the way it seems to be
18 going I would say another hour.
19 THE COURT: Do you think we might conclude his
20 testimony today then?
21 MR. LYDON: We'll do our best.
22 MR. PARRISH: As will I.
23 MR. LYDON: I'll do my best.
24 THE COURT: I'm sure he'll be here tomorrow.
25 THE BAILIFF: Jury is present and seated, Your

3032

1 Honor.
2 THE COURT: Thank you. Let's continue
3 Mr. Acosta.
4 MR. ACOSTA: May it please the Court.
5 Q. So Mr. Eastman, now we're into the 70s, and
6 you've left Iowa, went out to California, what did you
7 do out there?
8 A. We're in the 70s, we've left Iowa, we've gone
9 to California, what did I do out there?
10 Q. Right. Did you leave Alene King -- was it in
11 the 70's or 60's?
12 A. I'll explain that Alene King departed and I
13 came back quickly and said, don't leave. I will come
14 back to Iowa, I'll forget all that business in
15 California, I won't go to the Fugitive, I won't do that.
16 I'll come back to Iowa and I'll make my home here and
17 I'll live up to this pledge.
18 Q. And then what happened?
19 A. She left anyway, but it took a year.
20 Q. And then --
21 A. At that point I took in some partners to save

22 my business, if I could. And married -- and divorced
23 Alene. And married a woman named Sherry Dickson who was
24 a model, who worked with me. And I made a film for the
25 United Way called the Day I Die. It was a very

3033

1 important film in my career because it announced me to
2 the United Way.

3 Q. How long did you work with the United Way?

4 A. This was a film made for the City of Cedar
5 Rapids that was independent of the national United Way
6 that got their attention.

7 Q. And then did you go on to work for the
8 national United Way?

9 A. Yes, but much later. There are other things
10 that are intervening here that are important to the
11 story, if you want to hear them.

12 Q. All right. Well, let me ask you, in the 1970s
13 at some point did you come to Florida?

14 A. Yes, to make a film for Motorola for -- my
15 business in Iowa concluded and I was hired by Motorola
16 Corporation to make a series of films on police training
17 in the City of Miami for Dade County in the City of
18 Miami.

19 Q. And how long did you do that?

20 A. That whole process took about a year.

21 Q. And what kind of training films were they?

22 A. They were basic police training films. And
23 everything that a police officer has to do from first
24 officer on the scene to driving, high speed driving,
25 crime scene investigations, bombs, 1, 2 and 3. Very

3034

1 sophisticated hard, still in use police training films.
2 You'll still find them in most police departments and in
3 Air Force and military use.

4 Q. And did one of your sons work with you?

5 A. Both of them.

6 Q. And then at some point in the 1970s, did you
7 start working on television in Tampa?

8 A. Well, yes. The Day I Die comes back into it
9 is more importantly if you would let me do it in
10 chronological order.

11 Q. Okay. What happened after the Day I Die?

12 A. We did the day I Die in Iowa before we went to
13 Florida to do the police training film. And in the
14 course of the police training film the Motorola -- the
15 United Way of America in New York had seen my film
16 and -- and came to me in Miami and said we want to hire
17 you. And they hired me at an exorbitant salary with
18 wonder terms and Susan Portz. And this woman Susan
19 Portz that was introduced with a Morrissey was my right
20 hand woman in all kinds of ways.

21 Q. Okay. Well, hold on a second.

22 A. I had to smoke.

23 Q. What I'm trying to do is find out in the
24 1970s, first of all, were you still smoking?

25 A. Yes.

3035

1 Q. And had you made attempts to quit smoking in
2 the seventies?

3 A. I hadn't thought so, but I was reminded of it
4 in the time that you're talking about it now. I thought
5 I tried cold turkey a couple of times and failed and I
6 thought I had given up on myself. But I realized later

7 that I hadn't and you're coming to the junction of why,
8 why I know that.

9 Q. Why do you know that?

10 A. Because Susan Portz, who was working for me in
11 Alexandria for the United Way, attempted suicide and was
12 hospitalized.

13 MR. LYDON: Your Honor, may we be heard?

14 THE COURT: Approach.

15 (Thereupon, the following bench conference was
16 had:)

17 THE COURT: This damn chair is falling apart.

18 MR. LYDON: Your Honor, aside from a relevancy
19 objection, I also expect him to get into something
20 that's in the nature of hearsay, which is a letter
21 or communication from Susan Portz.

22 MR. ACOSTA: Well --

23 THE COURT: We're not going to go into all of
24 that, are we?

25 MR. ACOSTA: I'm hoping not. I'm trying to
3036

1 steer him away from it. It's difficult -- he's
2 kind of a difficult witness.

3 THE COURT: I can see that.

4 MR. ACOSTA: What he's trying to do is to
5 justify how he remembers something because I know
6 that he's so afraid of being cross-examined on the
7 basis of his memory. I don't think the letter
8 would be hearsay under the circumstances, but I'm
9 not trying to go to the letter or use the letter.

10 THE COURT: Isn't he here to talk about his
11 smoking?

12 MR. ACOSTA: He is. I'm trying to get him to
13 do that. But what he tries to do is to justify
14 answers that he gave in his deposition in giving
15 his testimony and I can't -- I can't shake him from
16 that. I've been trying. I'll just keep pushing
17 him along, that's all I can do.

18 MR. LYDON: Your Honor, what he specifically
19 wants to do here is to reference some letter that
20 he had from Susan Portz that I think is hearsay.
21 That's my view of it.

22 MR. ACOSTA: Well, I know -- I know -- well
23 you -- maybe --

24 MR. LYDON: Sounds like that's where he's
25 headed.

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1 MR. ACOSTA: I'm trying not to let him go
2 there, is what I'm suggesting. So --

3 THE COURT: Well, the Court will probably be
4 sustaining an objection if he does go there.

5 MR. ACOSTA: Well, this letter would be a past
6 recollection. Wait a minute, wait a minute, this
7 is an ancient letter that he used to refresh his
8 recollection. It was like 1973 or so.

9 THE COURT: Is anybody going to challenge him
10 on the date?

11 MR. ACOSTA: They are. That's --

12 THE COURT: That he's talking about right now.

13 MR. ACOSTA: I think they are. I don't know.
14 That's what he's thinking that they're going to.
15 So, but anyway I'll see if I can work my way around
16 it.

17 THE COURT: Okay.

18 (Thereupon, the bench conference was
19 concluded.)
20 BY MR. ACOSTA:
21 Q. Mr. Eastman, just with respect to your smoking
22 in the 1970s, you mentioned that you've -- you attempted
23 to quit smoking back then.
24 A. Yes.
25 Q. Did you want to quit smoking?

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1 A. Yes.
2 Q. And why did you want to quit smoking?
3 A. I begun to believe it was hazardous to my
4 health, that it was a danger. I began to believe what
5 was coming on the cigarette package to be true.
6 Q. And were you successful?
7 A. No.
8 Q. How did you feel about not being successful at
9 your attempts to quit smoking?
10 A. I'm a very competitive person. I was defeated
11 by it, I didn't like it, I hated it. I really was just
12 tormented by it.
13 Q. And now let's just talk about the time you
14 moved to Tampa. When did you move to Tampa?
15 A. Came to Tampa in 1978, '79.
16 Q. Okay. Why did you come to Tampa?
17 A. I'd been fired from a job in Miami and the
18 next available job was in Tampa, and I was hired for it.
19 I auditioned for a job at WDAE in Tampa to do a show
20 called The Talk of Tampa Bay. Was a talk show on WDAE
21 from 8:00 in the evening until midnight at that time
22 period. It was a big show.
23 Q. Now, up until this time that you had moved to
24 Tampa, had you ever had any drinking problems?
25 A. Oh, yes. Yes, I had a couple of drinking

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1 problems that worried me, yes. That I wanted to
2 monitor. We go back to when Alene left me in Iowa, if
3 you want to go back there.
4 Q. Is that in the late sixties?
5 A. Yeah. Yeah. That bothered me a lot. I --
6 I -- I wasn't -- I had no drinking problems up there in
7 college or any other time, but boy that was tough.
8 Q. So how long did that last?
9 A. Oh, it lasted two or three months, probably.
10 Q. And then after that any problems?
11 A. No. I just -- I talked myself out of it. I
12 realized it was a dumb thing to do and I got occupied
13 elsewhere. It wasn't -- it wasn't -- I hadn't been
14 arrested or I didn't need any counseling or I didn't do
15 anything, I just got out of it, I just stopped it.
16 Q. Did it affect your work?
17 A. No.
18 Q. Did you ever lose any job because of drinking?
19 A. No. No. No. No. But that was the first
20 time. You asked of times and that was the first time --
21 Q. Was there any other time before you moved to
22 Tampa?
23 A. No. There were probably some times in Miami
24 with the police training films when tensions would go up
25 and I might drink a little bit more than I would

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1 normally and I would worry about, but then I would just
2 stop it, I would just control it. I had control of it.

3 I didn't seek any help or advice about it.
4 Q. Why were you able to control drinking but not
5 cigarettes?
6 A. I wish I knew the answer. I don't know that
7 answer. I -- the answer is obvious. The answer was
8 that I was -- I had an addiction to cigarettes. I've
9 learned that since. I didn't know that then, I couldn't
10 have said that then. I didn't know that.
11 Q. But you knew you couldn't quit?
12 A. I knew I couldn't quit. I knew I hadn't quit,
13 put it that way. I didn't know that I still couldn't
14 quit. I thought I could quit, actually.
15 Q. And what happened? What happened why didn't
16 you try?
17 A. I failed. When a competitive person still
18 thinks they can do it, not today, maybe tomorrow. Catch
19 me next week. That's the way people like I think.
20 Q. Okay. Now we get to Tampa, and what did you
21 do here?
22 A. I went on the radio from 8:00 until midnight
23 on a talk show that had been on the air in the hands of
24 a man that created a lot of stir. His name is Stan
25 Majors. I don't know if anybody would remember him but
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1 he was a troublemaker. And I came in to cool it down.
2 That's talk radio. Talk radio is a place where it's
3 supposed to be exciting and difficult, and I did that
4 and was successful and television people came to see me
5 and asked me if I would like to be on television.
6 Q. Had you made any movies about that time?
7 A. Yeah, well -- in one of comings and going that
8 we have to get through here on the roads of hitchhiking
9 coming I had written a script about when I married the
10 woman named Sherry Dickson. Sherry Dickson's father was
11 in the business of cock fighting. He raised fighting
12 chickens. I never heard of such a thing. And I thought
13 it was pretty interesting.
14 Q. All right. But did you make a movie? What
15 was the movie about?
16 A. Made a movie about chicken fighting.
17 Q. What was it called?
18 A. Rooster.
19 Q. And what did you do in the movie?
20 A. Well, I wrote it and I played a part in it as
21 a sheriff.
22 Q. Was it a full length feature?
23 A. Full length feature film.
24 Q. Was it a success?
25 A. Beg pardon?

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1 Q. Was it a success?
2 MR. PARRISH: Relevance, Your Honor.
3 THE COURT: Mr. Acosta, these are interesting
4 vignette, but it has little to do with smoking?
5 MR. ACOSTA: I agree, Judge, but I think that
6 it -- I'm -- I'm offering this up to show what his
7 background in his successes in life have been
8 versus problems that he's had.
9 Q. So after Rooster you're in Tampa, you're at a
10 radio station and a television station?
11 A. I get a job in television, yes.
12 Q. And were you -- what was the -- the radio
13 station that you worked at?

14 A. WDAE.
15 Q. Okay. And did there come a point in time when
16 you saw Dr. Groff?
17 A. Yes. There came a second -- second radio
18 station, WPLP, at which time I saw Dr. Groff, yes.
19 Q. All right. And what -- what did you see
20 Dr. Groff for?
21 A. Dr. Groff had been a guest on one of my
22 television shows, and radio shows and I found him a very
23 interesting man. He was a psychiatrist, psychoanalyst.
24 I thought that my drinking, I thought that my life, what
25 I was doing with my life was interesting to explore,

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1 what writing I had done was interesting and I wanted to
2 see him and talk to him about myself, my personality.
3 Q. And did you set up a --
4 A. Yes.
5 Q. -- a treatment plan with him?
6 A. Yes, I did.
7 Q. And did it involve cigarettes?
8 A. It did -- well, I didn't know it until much,
9 much later that it was a part of it. Yes, it was a part
10 of it, but I thought I was there for something else. He
11 was reducing my cigarette smoking and my drinking, but I
12 didn't look at it as that, I looked it as a general
13 house cleaning of my personality.
14 Q. Well, did you reduce your cigarette smoking?
15 A. Yes.
16 Q. And what happened?
17 A. Well, at the end of it I quit, I didn't see
18 him any longer and I went on back to smoking and
19 escalated back to a higher level.
20 Q. Well, how come?
21 A. Well, the how come was because I must have
22 been addicted to them and I just continued to go back to
23 that level.
24 Q. Well, did you want to quit?
25 A. I must have wanted to quit so I reduced to 15.

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1 But I didn't go any further than that. I think the idea
2 was I wanted to quit, and -- and at that point at 15 I
3 was having a little argument with the lady I was with at
4 the time, a girl named Jan Rosicky. And I think she
5 resented my seeing Dr. Groff. And we split up.
6 Q. When you say you must have wanted to quit.
7 Did you have the idea in your head that you wanted to
8 quit?
9 A. It's not sufficiently to quit.
10 Q. How did you feel about that?
11 A. Well, at the time that I did I was solving
12 another problem and I quit. I just let it go. I was at
13 15 and that's where I let it go.
14 Q. All right. And then after that situation what
15 happened next? In terms of your smoking what did you
16 do?
17 A. In terms of my smoking I went on with the
18 radio shows and the television shows, and eventually
19 then I saw another man, I saw another psychiatrist.
20 Q. And who was that?
21 A. Dr. Walter Afield.
22 Q. And what did you see -- first of all how did
23 you meet him?
24 A. On the show? I saw -- every physician in town

25 came through the shows one way or another and I got to
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1 know them in that way.

2 Q. All right. And what did you see Dr. Afield
3 about?

4 A. I saw him about my drinking. I thought I was
5 having a problem with drinking, that I was going to come
6 back with a problem in drinking. Those were heavy
7 shows, those were heavy things to do every day and I was
8 under stress. And I thought I was going to back to
9 drinking too much and I didn't want to.

10 Q. Okay. We've heard testimony from Connie
11 Fowler and a man that lived with her, do you remember
12 breaking your knee?

13 A. Oh, yes.

14 Q. And did that have anything to do with alcohol?

15 A. Well, it had to do with recovery from alcohol,
16 because recovery from breaking my knee, I fell and broke
17 my patella in four different pieces and they had to
18 screw it back together and wire it back together and it
19 hurt like hell. And I was staying with Connie May at
20 that time and I drank too much. I had no other thing to
21 do, Demerol and wine.

22 Q. And then was it after that that you saw
23 Dr. Afield?

24 A. I think I'd seen him previous to that.

25 Q. All right. Well, at some point in time did
3046

1 you get a prescription from him called Antabuse?

2 A. Yes.

3 Q. And was it after you broke your knee?

4 A. I think I had the Antabuse during the time I
5 broke my knee and wasn't using it. I think it was some
6 stuff on the shelf. I had used it then I think I used
7 it again.

8 Q. And did it work?

9 A. Oh, when -- yes, it worked. It's a drug that
10 if you take and you drink you should detox completely
11 from it, and if you don't you're going to be terribly,
12 terribly sick. And I thought I had detoxed from it and
13 I hadn't and I got terribly, terribly sick. And in that
14 sense it works.

15 Q. And after that point in time, how did your
16 drinking go?

17 A. Well, I modified it as I've always modified it
18 and slowed it down and ended the problem.

19 Q. Now did there come a time on your radio show
20 that you had a cigarette oriented sponsor?

21 A. Oh, yes.

22 Q. And was it about the same time?

23 A. I think it would have been, yes. In the late
24 eighties, '86, maybe '87.

25 Q. All right, sir.

3047

1 A. Smoke Enders was the client. They came to the
2 sales department of my radio station and asked to hire
3 me in order to demonstrate that their product Smoke
4 Enders would cause individuals who took it to quit
5 smoking.

6 Q. And were you on the air at the time?

7 A. Yes, I was to take the prescription, I think I
8 drank it, I was to drink it on the air. And talk about
9 it and make a pitch for what they did. And -- and then

10 tell my audience that I was in the process of quitting
11 smoking and what it felt like. And I would talk to them
12 again tomorrow.

13 And then tomorrow I would talk about what I
14 had gone through in the night before and that I was
15 still quitting to smoke and I was still taking this
16 substance and it was working. And I took it for 24
17 hours and I didn't make it, but I didn't tell anybody.
18 So I was cheating.

19 When I went back on the air the next day I
20 said I was taking it, I had taken it last night and I
21 managed, it was hell but I got through it, and I'm
22 lying. And I went through another 24 hours of that and
23 at some point later in the afternoon of that day I went
24 back to smoking and I went to my sales department and I
25 had said, I can't do this, this is fraudulent. I got to
3048

1 tell them the truth. I can't do this.

2 And I had a reputation, it was a very good one
3 for always telling the truth. So I bellied up to the
4 bar and said I tried this and I couldn't make it. And
5 so therefore you get your money back and don't hire me
6 because I'm the wrong guy. And it was embarrassing but
7 it was honest and I failed.

8 Q. Was that the last time you remember attempting
9 to quit smoking?

10 A. No, I don't think it was. It was a serious
11 time. I don't think it was the last time.

12 Q. Did you go to see a Dr. Stein at some point?

13 A. Oh, yes. Yes, yes.

14 Q. Did you have a conversation with Dr. Stein
15 about smoking?

16 A. Yes.

17 Q. What did you tell Dr. Stein?

18 A. Well, I was going to marry. I wanted to marry
19 a very nice young woman who has already testified.

20 Q. All right. And what's her name?

21 A. Teresa Legatti.

22 Q. Okay. Was she one of first witnesses in this
23 case?

24 A. Yes.

25 Q. And just about the smoking issue, what did you
3049

1 tell Dr. Stein?

2 A. What did I tell -- what did she tell us?

3 Q. No, what did you tell Dr. Stein about smoking?

4 A. I told him I was having a great deal of
5 difficulty in smoking. I didn't think I could quit. I
6 wanted to quit. He said; well, quit. Try quitting.
7 And I think I tried -- I gave it one good 24 hour shot,
8 just really tried. And I came back to him and said I
9 can' quit.

10 The reason I was there was I was having
11 impotence problems and I couldn't get married with
12 impotency, I couldn't do that.

13 Q. All right. And then how much were you smoking
14 after you got married to Terry Legatti?

15 A. It started out I was two-and-a-half packs
16 probably at the time I married her. And by the time I
17 finished with our marriage and all of that I was up to
18 three packs, four packs a day.

19 Q. And how did you feel about your smoking at
20 that point?

21 A. Thought I was hopelessly entrapped.
22 Q. When did you realize you were sick from
23 cigarette smoking?
24 A. The morning that I was -- my -- Terry took me
25 to a walk in hospital. I knew I was sick. I knew I
3050
1 didn't feel well. I knew I was in trouble, but I didn't
2 know how sick I was. And the look on the man's face in
3 the hospital of the walk in clinic told me how sick I
4 was. He said get this guy out of here, don't let him
5 die on my furniture. At that moment I knew I was sick
6 and in trouble.
7 Q. And then did you go in the hospital?
8 A. Yes.
9 Q. And how long were you there?
10 A. Morton Plant, I was there 10 days, two weeks.
11 Q. Did you smoke in the hospital?
12 A. Of course not. No.
13 Q. Why not?
14 A. Well, it wasn't permitted. I had no desire.
15 Q. Why not?
16 A. I was too sick.
17 Q. And then when you got out of the hospital,
18 where did you go?
19 A. Went to -- Terry took me to our house, what
20 had been our house. And I stayed there for some days
21 and then I moved to a place on the beach.
22 Q. And were you on oxygen at some point?
23 A. They prescribed oxygen and oxygen unit went
24 home with me, yes.
25 Q. How did you feel back then?
3051
1 A. Not good, not well.
2 Q. About a year before you got that pneumonia and
3 went to Morton Plant, had you fallen and hurt yourself,
4 hurt yourself?
5 A. On a barbecue, Yeah. Terry is big one for
6 gardens.
7 Q. Do you remember breaking a rib?
8 A. Yes.
9 Q. And how long did it take to you recover from
10 that?
11 A. Oh, I think six weeks, probably.
12 Q. We put a medical record up that indicated at
13 the time that you were in pain and you -- it said you
14 did not have any shortness of breath at that time, did
15 you have shortness of breath at that time?
16 A. I didn't recognize it.
17 Q. Were you prescribed any kind of a belt or
18 anything to wear around your chest?
19 A. Yes, but I must have been given one and I
20 probably put it on and I probably wore it, but I don't
21 remember it hurting me or restricting me or any of the
22 other things that might have done.
23 Q. Other than breaking your rib at that time,
24 what -- how did you think your health was in the year or
25 two before you found out you had COPD?
3052
1 A. I thought I was very out of shape. I
2 thought -- I was coming up 70 years of age and I thought
3 if I tried to dribble a basketball and make a shot I'd
4 fall. I thought if I tried to pass a football I
5 probably would not do very well, but I didn't anything

6 other than I was probably out of shape.
7 Q. Now going back in time at one point in time
8 you had testicular cancer?
9 A. Yeah.
10 Q. And was that successfully removed?
11 A. Yeah.
12 Q. And did you get some treatment for that?
13 A. Yes.
14 Q. Do you remember what kind of treatment you
15 got?
16 A. Radiation, the best testicular cancer hospital
17 was in Allegheny General in Pittsburgh.
18 Q. In Pittsburgh. And where did you get the
19 radiation on your body?
20 A. Oh, my pubic area and my lower abdominal area.
21 Q. And to your knowledge did you have any adverse
22 reaction to that?
23 A. No.
24 Q. Back in the '50s and '60s, did any -- let's
25 see, you had smoked American Tobacco, Lucky Strikes and
3053
1 then Marlboros, did you ever receive any warning from
2 either Philip Morris or American Tobacco that there was
3 anything hazardous about their cigarettes?
4 MR. LYDON: Objection.
5 THE COURT: I'll permit it.
6 BY MR. ACOSTA:
7 Q. Did they ever warn you?
8 A. Other than to put a notice on the package?
9 Q. Right.
10 A. Whatever notices they put on their packages I
11 would have known about, but I don't know -- they didn't
12 come to my house and knock on my door.
13 Q. Other than that you never saw a warning?
14 Other than what was on the package did you ever get any
15 other warning?
16 A. No.
17 Q. Now after you found out that you had pneumonia
18 and COPD, what happened to you and Terry Legatti?
19 A. We separated and divorced.
20 Q. When did that happen?
21 A. 1989, 19 -- no 2000. 2001, I don't know
22 what -- I don't know the exact date.
23 Q. How long was it after you got your COPD
24 diagnosis and the pneumonia was it that you separated?
25 A. Well, we were separated at the time I got the
3054
1 disease -- I called her and took her -- called her and
2 she took me to the hospital, we separated. Went back
3 together until I recovered a little bit. And then we
4 agreed we should get a divorce. It must have happened
5 within two years of that date. The best I can do. We
6 didn't realize -- you heard her say it.
7 Q. How did you feel about it?
8 A. Right.
9 Q. Then at some point did you go on oxygen all
10 the time?
11 A. Now, yeah.
12 Q. How long have you been on oxygen all the time?
13 A. Since the operation, since -- since going to
14 the hospital. It seems to me it's been all the time.
15 Q. Was there a short period where you didn't have
16 oxygen all the time?

17 A. No, I don't think there's been any.
18 Q. And have you seen doctors on a regular basis
19 since then?
20 A. Uh-huh (indicating affirmatively). Yes.
21 Q. Do you remember seeing Dr. Burchette?
22 A. Yes.
23 Q. Dr. Modh?
24 A. Yes.
25 Q. Did you ever have any drinking problems after
3055
1 1995?
2 A. No.
3 Q. And in the earlier nineties did you have any
4 drinking problems? Did you ever have any drinking
5 problems since that time you took Antabuse back in the
6 mid 1980s?
7 A. No.
8 Q. Have you smoked a cigarette since you went in
9 the hospital in 1995?
10 A. No.
11 Q. Do you still have cravings for cigarettes?
12 A. Yes, now and then.
13 Q. Now at some point in time, did you find that
14 you had another illness?
15 A. Yeah. Quite by accident I learned.
16 Q. How did you find out?
17 A. I have a bum hip, I have a hip that's
18 degenerating and I went for a diagnosis and they took an
19 x-ray of my hip to see if I needed a hip replacement.
20 And I do and they discovered the aneurism.
21 Q. And when was that?
22 A. Within eight months, nine months.
23 Q. Within the last eight or nine months?
24 A. Yeah.
25 Q. And what are you going to do about that the
3056
1 aneurism
2 A. Going to have it operated on.
3 Q. Do you have a date set?
4 A. I'm to call them as soon as this trial is
5 coming to its conclusion.
6 Q. And when do you expect to go in?
7 A. I think they're going to do some kind of
8 pre-op, I will be there a week or ten days prior to the
9 operation. When this trial ends, two weeks.
10 Q. How do you feel about that?
11 A. Scared.
12 Q. We've seen evidence about lung cancer. Have
13 you thought about lung cancer?
14 A. Sure. Why not.
15 Q. How come?
16 A. It's next. It could be possible. Can I make
17 a speech?
18 Q. No, I want to ask you -- well, do you have a
19 fear of --
20 A. I just have a fear of --
21 Q. Of what?
22 A. Of being mentally incapacitated.
23 Q. As a result of what?
24 A. Anything. The business of not being able to
25 get off a ventilator, scares the daylights out of me,
3057
1 would you, would anybody. That's the state I'm in.

2 Scared me with your ventilator. It scared about cancer.
3 MR. ACOSTA: That's all I have, thank you.
4 THE COURT: All right. Cross-examination?
5 MR. LYDON: Yes, Your Honor.
6 THE COURT: Very well.
7 CROSS-EXAMINATION
8 BY MR. LYDON:
9 Q. Mr. Eastman, I haven't had the opportunity to
10 ask you any questions at any earlier date, right?
11 A. Right, yeah.
12 Q. But I understand from -- I have read things
13 that -- from previous testimony, and dates are a problem
14 for you, is that a fair statement?
15 A. Oh, I need a stipulation, yeah. I haven't
16 asked for it, but I need it.
17 Q. And you remember things more in the sequence
18 and -- in terms of what you were doing at a time as
19 opposed to what the date was?
20 A. Story telling.
21 Q. Is that correct?
22 A. Yeah, yes.
23 Q. Now, you do remember warning labels that were
24 on cigarettes though, correct?
25 A. Yes.

3058

1 Q. And if we could have slide 1, please. You
2 remember this warning that appeared in 1966, and take my
3 word for it, I don't think there's a dispute with
4 Mr. Acosta about this, the date would have been 1966?
5 A. Yeah.
6 Q. Do you remember this was the first warning
7 that went on a package of cigarettes?
8 MR. ACOSTA: I have to object, Judge, because
9 it says; caution. It doesn't say; warning. And I
10 object to the mischaracterization. There's a
11 difference.
12 MR. LYDON: Well, Your Honor, I think the jury
13 can read it and see whatever they want to take from
14 it, if that's what it says. Do you remember a
15 caution, cigarettes smoking may be hazardous to
16 your health?
17 THE COURT: The portion in the red and white
18 in the center is the exhibit from the cigarette.
19 MR. LYDON: That's taken right off the
20 cigarette package.
21 THE COURT: The portion above that says;
22 cigarette warning labels 1966, is identifying
23 language from the defense.
24 MR. LYDON: That's correct, Your Honor.
25 Q. What appeared on the cigarette package is just

3059

1 what's between those two red borders, do you remember
2 that?
3 A. Do I? Yes, I do.
4 Q. And do you recall that that happened after the
5 first Surgeon General's report on smoking and health?
6 That this was what came after that time shortly -- you
7 know, within a year or two years after that time -- two
8 years after?
9 A. Yes, yes.
10 Q. Now, subsequently there were other warnings.
11 And let's take a look at those. Number 2, if I could
12 have slide 2. In 1970 the warning changed and indeed

13 said warning and again it's the language that appears
14 between those red borders, "the Surgeon General has
15 determined that cigarette smoking is dangerous to your
16 health." You saw that one too, correct?

17 A. Yes.

18 Q. And that would have been on each package of
19 cigarettes that you purchased, right?

20 A. I assume so, yes.

21 Q. And then if we could go to the next slide,
22 Number 3, in 1985, the warnings changed again. This
23 time, it depended upon which package of cigarettes you
24 opened as to what the warning would be, because it
25 rotated, do you recall that?

3060

1 A. Yes.

2 Q. And there were four different warnings that
3 might appear on any package of cigarettes, they rotated
4 one of them at the top, you recall in particular, don't
5 you, that warning, Surgeon General's warning -- if we
6 could move -- "smoking causes lung cancer, heart
7 disease, emphysema and may complicate pregnancy." You
8 remember that, too?

9 A. I'm honestly answering -- I know that all of
10 those warnings appeared on packages of cigarettes and
11 I'm trying to think of purchasing cigarettes and seeing
12 warnings and apply any emphasis to myself. Certainly I
13 saw that, I didn't apply it to myself.

14 Q. Okay. When you say you didn't apply it to
15 yourself, you're saying that you hoped it wasn't going
16 to happen to you?

17 A. I was oblivious to the harm that I was under.
18 I was -- I was -- I was smoking.

19 Q. Okay.

20 A. And I thought I was addicted. I can't say
21 that, you see, because it's not provable.

22 Q. Okay. Now going back to that very first
23 warning, we don't have to have it up, we can take it
24 down, the one that was the caution warnings, "caution,
25 cigarette smoking may be hazardous to your health."

3061

1 That followed, do you remember as we said, after a
2 Surgeon General's report, correct?

3 A. Yes. I'm assuming that you're telling me the
4 truth. I believe you that you're saying it did, so I'm
5 saying yes to your answer, to your statement.

6 Q. Let me put it then in terms, what were you
7 doing at the time that this first Surgeon General's
8 report came out?

9 A. I was very busy in the 1950s, right?

10 Q. We're in the 60s, you remember -- I'm not
11 trying to pin you to a date, I'm trying to figure out if
12 you can remember what you were doing when the report
13 came out?

14 A. I was smoking Marlboro cigarettes. And I had
15 become aware that other people were saying that
16 cigarettes could be difficult or dangerous to you. I
17 was weighing whether that was true or not in the '50s,
18 early '60s.

19 Q. Okay. Do you recall that at or about the time
20 that that Surgeon General's report came about, that this
21 was within a few years, very few years of when you had
22 your testicular cancer?

23 A. I do not know. It -- if you say that it is,

24 it is, I didn't think of it in those terms at all.
25 Q. Well, when you had your testicular cancer and
3062
1 this radiation treatment that you mentioned, that wasn't
2 just a one episode kind of treatment, it went on, did it
3 not, over a period of time?
4 A. Right. Yes.
5 Q. Do you remember how long it went on?
6 A. Several months. I would think three.
7 Q. And this was a time when -- you had two sons
8 at this point in time, too, right?
9 A. Yes.
10 Q. I believe this was a point in time which
11 you've previously described as one where you took -- you
12 stopped and took stock of where you were in life?
13 A. Oh, yes, of course.
14 Q. Yes?
15 A. I remember that, yeah.
16 Q. And you had gone to Hollywood, correct?
17 A. (Nods head.)
18 Q. And it was when you arrived in Hollywood or
19 thereabouts that this was diagnosed, this testicular
20 cancer?
21 A. Yes.
22 Q. Was the surgery in Hollywood?
23 A. Yes.
24 Q. And you had some treatment in Hollywood?
25 A. Just surgery.

3063
1 Q. Just the surgery. And so the radiation took
2 place later?
3 A. In Pittsburgh.
4 Q. In Pittsburgh. Over what period of time? Do
5 you remember how long that was?
6 A. Three months.
7 Q. During the course of that treatment, you
8 thought about what you were doing with your life, did
9 you not?
10 A. I certainly did.
11 Q. And you had already at that point in time
12 wondered about such things as whether you were drinking
13 too much or smoking as much as you should be smoking,
14 that sort of thing, weren't you?
15 A. Smoking wasn't so much a part of it if you'll
16 allow. Then the kind of things that Alene and I saw
17 later on when we decided to go out to Iowa and remake
18 our lives. It was in the general area of morality.
19 Q. Okay. And in the area of morality, whatever
20 you -- you were still thinking about what you were going
21 to do with your life, correct?
22 A. Yes.
23 Q. How you were going to live it, right?
24 A. Yes.
25 Q. And you did think about drinking and smoking,

3064
1 did you not?
2 A. Those were all things I were doing. And I
3 would say eating and sleeping and all other things that
4 were human in the course of my -- my daily living, yes,
5 all of it.
6 Q. And you were doing this in light of having
7 your own mortality and challenges to your health brought
8 to the fore, correct?

9 A. Absolutely.
10 Q. They were in your mind at the time?
11 A. Absolutely.
12 Q. And it's true, is it not, that in the process
13 of looking at your own morality, and your personal life
14 style, you looked at the potential affects of drinking,
15 right?
16 A. And all other things.
17 Q. And you looked into the potential of affects
18 of smoking, did you not?
19 A. And all other things.
20 Q. And I believe the question has been asked
21 previously, but you looked into potential effects of
22 unprotected sex, too?
23 A. Yeah.
24 Q. And is this what you had to say about that?
25 You were aware of the dangers inherent in all three of
3065
1 those, but none of them applied to you?
2 A. Yes, I remember saying that.
3 Q. Okay. And that was your thought process at
4 the time, was it not?
5 A. I believed that none of those three things I
6 was doing in excess to the extent of harming myself.
7 Q. You were aware of the dangers inherent in
8 those but none of them applied to you? Those were the
9 words, were they not, that you used?
10 A. I wasn't able to apply harm from any of those
11 three things, and many others to me in a way that made
12 me fearful.
13 Q. Well --
14 MR. LYDON: If we could have -- what I'm
15 looking for is page 350 of his deposition, lines --
16 excuse me, it's -- yeah, page 350 starting at lines
17 20 through 25. And then on to 351, lines 1 through
18 10.
19 MR. ACOSTA: Wait until I find it.
20 MR. LYDON: He's trying to find it.
21 MR. ACOSTA: What lines?
22 MR. LYDON: I think Mr. Denson has them.
23 MR. ACOSTA: What lines?
24 MR. LYDON: Okay. We're talking about
25 lines --
3066
1 MR. ACOSTA: We're asking about the lines.
2 MR. LYDON: Okay. Lines 20 through 25 on
3 page 350 and lines 1 to 10 on 351.
4 MR. DENSON: I'm going to object to improper
5 impeachment, Judge.
6 THE COURT: I'll permit it.
7 MR. LYDON: Can we have those lines, please.
8 Q. Now, these were the questions and answers that
9 were given at your deposition which was taken in this
10 case, correct?
11 A. Yes.
12 Q. The answer -- the question; "all right. And
13 in the process of evaluating your own morality --
14 "ANSWER: Yes.
15 And your personal lifestyle --
16 Yes.
17 "QUESTION: I take it you looked into it."
18 THE COURT: Proceed.
19 MR. LYDON: "Potential effects of drinking?

20 Yes.
21 You looked into the potential effects of
22 smoking
23 Yes.
24 You looked into the potential effects of
25 unprotected sex.

3067

1 "ANSWER: I was aware of the dangers inherent
2 in all three of those, but none of them, I thought,
3 applied to myself."
4 Those were the words you used, correct?
5 A. Yes.
6 Q. Okay, thank you.
7 Now, and what you were stopping and taking
8 stock of was how these activities would affect you given
9 your own cancer diagnosis and treatment at the time,
10 right?
11 A. It was more a -- it was more generalized than
12 that. It was very soul searching.
13 Q. All right. In any event --
14 A. It wasn't like my fear of cancer or death. It
15 was a fear what to do with life.
16 Q. Okay. In any event the decision that you made
17 though, after -- in the process of this reexamination,
18 was that you were going to smoke and go on smoking,
19 right?
20 A. I did.
21 Q. And you're going to take a drink when you want
22 one, isn't that what you decided at that time?
23 A. Yes.
24 Q. And as you say you were going to go on living
25 your life as you chose, correct?

3068

1 A. Say again?
2 Q. But you were going to live your life as you
3 chose to do from that point on, correct?
4 A. I was going to live me life. I wasn't
5 thinking in terms of choices, I was thinking that I was
6 in -- in a stream. And I was in the stream without harm
7 to myself and I would I continue to swim therein.
8 Q. Now, you specifically knew the potential harms
9 that arose from cigarette smoking in terms of threats to
10 your lungs, did you not?
11 A. No.
12 Q. Well, you knew that you could suffer lung
13 cancer, did you not, at that point in time --
14 A. Yes.
15 Q. -- from cigarette smoking? And you knew you
16 could suffer various respiratory diseases, did you not?
17 A. The admonition said; may be hazardous.
18 Q. You're talking about the warning and I'm
19 asking you what you yourself knew at that point in time
20 separate and apart from the warnings.
21 A. In my mind it was always maybe.
22 Q. In your mind, though, did you or did you not
23 know about respiratory disease?
24 A. I knew so little about respiratory disease
25 that I couldn't have commented on it. If you asked me

3069

1 about COPD at that date or any other respiratory
2 disease, I couldn't have responded.
3 Q. Did you associate cigarette smoking at that
4 time with lung cancer and respiratory disease?

5 A. I associated smoking with what people said was
6 a cancer scare. You could get cancer from smoking
7 cigarettes. So it would have to be lung cancer or --
8 Q. Okay.
9 A. -- or some other aspect of the respiratory
10 system by -- by inclination, by --
11 Q. Okay. You knew that the association of lung
12 cancer and cigarette smoking at that point in time, that
13 you were aware of, correct?
14 A. With the admonition that it may. It was
15 always conditional. It was never it was. It was never;
16 you're going to get lung cancer if you smoke cigarettes.
17 It was it may be, or we have reason to believe, or watch
18 out for.
19 Q. Well --
20 A. That is what it says, sir.
21 Q. Well, let me ask you some further questions
22 about respiratory disease.
23 You knew, did you not, and again I go back to
24 your words, if there was an entire grouping of diseases
25 with reference to the lung that could be affected by

3070

1 tobacco.
2 A. In the broadest senses I knew that if you've
3 got something as a result of smoking cigarettes in a
4 respiratory area, it meant things I didn't even imagine
5 or know.
6 Q. Do you recall that it was your feeling when
7 you were doing this reexamination that you were
8 monitoring yourself?
9 A. Yes.
10 Q. And you were monitoring yourself with respect
11 to your cigarette smoking as you were with your
12 monitoring --
13 A. Right.
14 Q. -- of alcohol?
15 A. Right. Yes.
16 Q. And you expected or anticipated that your body
17 would tell you if you were abusing it?
18 A. Yes.
19 Q. That's what your thought processes was back at
20 that time?
21 A. Yes, that's true.
22 Q. And from your perspective, no one was advising
23 you in any way that would have any effect on you, that
24 was also your thought process at that time, correct?
25 A. Correct.

3071

1 Q. Now, for example, in 1968, you had to go to a
2 hospital in Iowa, do you recall that?
3 A. Yes.
4 Q. And we saw some of the records I believe over
5 the last couple of days?
6 A. Right.
7 Q. You reported to that hospital because you were
8 having stomach problems, correct?
9 A. Gastric.
10 Q. And you were hospitalized for it, was it eight
11 days, nine days, something like that?
12 A. I think less, but I remember it as a test
13 situation, a number of days.
14 Q. If we were to put the record up, whatever the
15 record reflects as your admission you don't quarrel

16 with?
17 A. No, no.
18 Q. Now, do you recall that at that time you were
19 told -- you told the doctors that you had been drinking
20 too much?
21 A. There's a story there. I don't guess you want
22 to hear it. But all of these things reattach to a woman
23 either coming or going. This was a young woman, Sherry,
24 who I was marrying. And this was a matter of my being
25 in shape to endure our marriage. And it's one of those
3072
1 things that he was checking up on himself about, just
2 being proper. Yeah, it was.
3 Q. So you went -- and you were admitted to the
4 hospital for several days?
5 A. To check up on what was going on, to get my
6 gastric juices in my stomach -- it was causing me
7 stomach upset. It was maybe a derivative of alcohol,
8 let's find out what's going on. She went with me, and I
9 got in and got out and that was the end of it.
10 Q. Well, she didn't stay with you in the
11 hospital?
12 A. No, no. It was group -- that was joint effort
13 in John's health.
14 Q. Okay and the concern though, was alcohol in
15 particular, was it not?
16 A. The doctor made it that.
17 Q. Well, you told the Doctor, had you not --
18 A. It was one part of it. He -- that was what he
19 found out. That's -- he couldn't come to any other
20 decision about what was wrong with my gastric juices.
21 Q. Well, number 1, you told him that you'd seen
22 an earlier doctor who told you you were drinking too
23 much, right?
24 A. Another day, another time.
25 Q. Yeah. At an earlier -- just earlier, within
3073
1 months prior to that hospitalization?
2 A. I don't know, did I?
3 Q. If the record reflects it?
4 A. I don't know.
5 Q. Do you remember that?
6 A. I don't remember that. I remember that whole
7 incident so much differently than the way it's been
8 described, so forgive me. I'll remember it the way it's
9 on the paper there.
10 Q. I'm sorry?
11 A. I'll remember it if it's in the records in a
12 certain way, I'll have to remember what's on the paper,
13 but --
14 MR. LYDON: Could we have 4181.3.1.
15 Q. This would be the -- I believe admitting
16 record. And you see where it reflects with the
17 highlighting the nervous stomach that you had just
18 talked about.
19 A. I see it.
20 Q. And you see the second underlining -- actually
21 it's the third from the top, that reflects you're having
22 consulted a local doctor.
23 A. Right.
24 Q. That would be a doctor --
25 A. Right.

3074

1 Q. -- other than a physician at the hospital?
2 A. Yes, I see that now, yes.
3 Q. And that was about six months prior. And that
4 doctor had told you at that time to abstain from alcohol
5 and use antacids to deal with your stomach problems. Do
6 you see that?
7 A. Yes, I see that.
8 Q. Now --
9 A. I'll go with that history, yes.
10 Q. All right. And if we move to 4181.4, you see
11 there that in the laboratory data that again the two
12 physicians whose signatures are actually underneath, if
13 you can pull those up, a little higher. Yeah.
14 A. Right.
15 Q. Signed by both physicians. There they
16 instructed you on the importance of alcohol abstinence.
17 Now, do you remember that it was alcohol abstinence that
18 they had instructed you about?
19 A. Yes, I do remember that.
20 Q. And you do understand abstinence to mean quit
21 altogether?
22 A. Yes, I do.
23 Q. Now, for some reason you were having problems
24 following that instruction; is that correct?
25 A. I had great difficulty. If there were some

3075

1 other records around we'll never find them, but I found
2 this whole report -- because my insurance company
3 canceled me. I remembered this doctor -- William,
4 whatever his name is, Davis, a young man. At the -- at
5 the hospital at Iowa, VA, and there was particular
6 personality difficulty he and I had. And he reported
7 this. And I had some insurance and the insurance was
8 canceled. And it was canceled because of this report.
9 Q. Well, maybe -- let's go to 48 --
10 A. And I got angry.
11 Q. All right. 4181.11.1. I don't know if this
12 is -- you've highlight a portion there. This is the
13 same hospitalization and this is what the doctors
14 recorded. This he would be you. "Admit to alcohol --
15 to his alcohol ingestion being quite heavy and states
16 it's necessary in his type of work."

17 MR. ACOSTA: Can we have the rest of the --
18 MR. LYDON: Sure. It's all there for anybody
19 to read. But it says; "necessary in his type of
20 work, but he denies any constant daily drinking or
21 a need for a morning pick up. He has never drunk
22 on a continuous basis for a sufficient amount of
23 time to cause withdrawal difficulties. He claims
24 that usually his stomach starts bothering him to
25 cause him to stop drinking."

3076

1 Q. Is that what you reported to this Dr. Davis or
2 at the time of hospitalization?
3 A. Yes, that would have been it if it's on the
4 page.
5 Q. Now with respect to what they found at the
6 time, they told you, did they not, that they had found
7 elevated liver function?
8 A. Uh-huh (indicating affirmatively).
9 Q. Do you remember that?
10 A. I remember being surprised by it, yes.
11 Q. And that they could actually feel your liver,

12 they told you that, too?
13 A. Palpable, yes, the guy said.
14 Q. Yeah. And told you as well that -- well, we
15 went back to the first page on the diagnoses, a probable
16 fatty metamorphosis of the liver, they told that you,
17 too, did they not? That was 4181.3. Sorry. At the
18 time. They told you that too, didn't they?
19 A. Whatever that it is, yes.
20 Q. Okay. Now the point is though, going back to
21 this, you were told at the time about this and didn't
22 you view this as a message that your body was telling
23 you about?
24 A. Well, I was 39 years old. And I was
25 monitoring myself for what I believed were the things

3077

1 that could harm me. What this man said to me and what
2 his diagnosis was did not ring true to me. And I don't
3 know that you have brought up in any subsequent medical
4 testimony here about me that anybody has found any
5 damages to my liver.

6 Q. Let me ask you, with respect to what he did
7 tell you, regardless of whether you think it was
8 accurate or not, is it -- was it your feeling that you
9 could deflect any kind of warnings that anybody would
10 give you?

11 A. Well, I would like to think I wasn't as
12 prejudiced as you're making me sound.

13 Q. Have you previously said that, that your ego
14 was sufficient to deflect any kind of warnings that
15 anybody would give you?

16 A. No.

17 Q. You don't recall saying that?

18 A. I don't recall saying that, no. That my
19 ego -- that I would recoil at anything that anybody
20 tried to tell me?

21 Q. Yes, that you said; "my ego was sufficient to
22 deflect any kind of warnings that anybody would have
23 given me." Do you remember stating that under oath?

24 A. Well, I was pretty awful.

25 Q. Now, in addition to warnings that you saw on

3078

1 cigarette packages or otherwise -- by the way you were
2 a -- someone described you as a voracious reader, do you
3 agree that you were a voracious reader?

4 A. I read a great deal. Voracious is a funny
5 word, isn't it.

6 Q. It's your word, too, right?

7 A. I suppose I used it.

8 Q. And when you were asked about whether you read
9 articles concerning smoking and health diseases, you
10 said you read vociferously, did you not?

11 A. Probably so.

12 Q. Whatever came down the pike you read it?

13 A. Probably so.

14 Q. And -- and on the subject of nicotine and
15 cigarettes, this is something that you've long known as
16 well, right?

17 A. What?

18 Q. Nicotine and tobacco and cigarettes?

19 A. Cigarettes contain nicotine?

20 Q. Yes.

21 A. Yes.

22 Q. You talked about your visit with Dr. Groff on

23 direct examination, do you remember that?
24 A. Do I remember hearing Dr. Groff?
25 Q. No, do you remember a few -- maybe an hour ago
3079
1 or hour and a half ago talking about Dr. Groff?
2 A. Yes.
3 Q. You were asked about Dr. Groff during the
4 medical examination that Dr. Kaplan did of you, too,
5 right?
6 A. What are you asking me, sir?
7 Q. I'm asking you, first of all, is it
8 Dr. Groff -- when you went to see Dr. Groff, you saw him
9 in your recollection prior to today -- prior to
10 Dr. Groff's appearing here. Let me start over.
11 Prior to Dr. Groff appearing here and
12 testifying --
13 A. Yes.
14 Q. -- is it fair to say you had no recollection
15 whatsoever of ever talking to him about cigarette
16 smoking? Is that right?
17 MR. ACOSTA: I need to object, as of what
18 time?
19 MR. LYDON: Prior to his testifying. Prior to
20 Dr. Groff testifying.
21 THE COURT: Do you understand the question?
22 THE WITNESS: I understand the question. But
23 what I meant is that I did not go to Dr. Groff for
24 treatment for cigarettes or alcohol. I learned
25 subsequently that he treated me for those aspects.
3080
1 I went there for psychoanalyst, if that's the word,
2 psychoanalytical help for my personality in
3 general, maybe that ego that you're talking about.
4 BY MR. LYDON:
5 Q. And while he developed -- while you developed
6 a friendship with him you terminated your relationship
7 with him in the consulting you did with him, right?
8 A. Yes.
9 Q. You thought he wasn't doing you any good,
10 isn't that the bottom line?
11 A. No. The lady I was more interested in than he
12 helped me determine that.
13 Q. I'm sorry, helped?
14 A. The lady that I was more interested in than I
15 was interested in him helped me to determine that.
16 Q. Okay. Let's go to a later -- you testified
17 about various efforts that you made to quit smoking.
18 A. Yes.
19 Q. Do you remember in particular as late as 1987,
20 that you visited with Dr. Stein?
21 A. Yeah.
22 Q. And I believe you testified about your visit
23 with Dr. Stein on direct examination.
24 And the topic of your smoking did come up in
25 the course of your first visit with Dr. Stein in 1987,
3081
1 isn't that right?
2 A. Yes, it did.
3 Q. And he advised you that you should give up
4 smoking, did he not?
5 A. Yes, he did.
6 Q. And you advised him that you were not going to
7 give up smoking, right?

8 A. I don't believe I put it in quite that
9 declarative of sentence, but you have it there, I didn't
10 mean it in any great item of strength though.
11 Q. Do you recall previously testifying along
12 those lines that in connection with the discussion that
13 you had with Dr. Stein --
14 A. I said I tried.
15 Q. I'm sorry?
16 A. I think I said I tried.
17 Q. That you tried?
18 A. Yeah, I thought I said that.
19 Q. Well, we can have -- this is page 659,
20 lines --
21 A. I thought I said I saw him -- and he asked
22 me -- he told me to quit. And I went away and I tried
23 to quit and came back and said, "I can't quit."
24 Q. You're saying at some point in time in your
25 meeting in 1987 -- let's put it this way. Let me start
3082
1 over.
2 In 1987 you met with Dr. Stein more than once?
3 A. Yes.
4 Q. Okay. In that connection, do you recall
5 telling him that you were not going to give up smoking?
6 A. I probably did, sir.
7 Q. Okay.
8 A. But I think I also remember having attempted
9 to quit even so having said that.
10 Q. I'm asking you what you remember telling him
11 and you remember that you told him you're not going to
12 give up smoking?
13 A. Right.
14 Q. Now, do you remember also saying that the
15 thought didn't across your mind that you weren't
16 interested in quitting smoking in 1987?
17 A. Repeat, please?
18 Q. Do you remember in 1987 saying that the
19 thoughts didn't cross your mind, you weren't interested
20 in quitting smoking?
21 A. Probably said that too.
22 Q. That it wasn't your attitude? Right? To
23 quit?
24 A. I probably said that too.
25 Q. Is that you weren't in the mood to quit?
3083
1 A. Said that too.
2 A man with a mouth like mine is all over the
3 block.
4 MR. LYDON: If I may have a moment, Your
5 Honor?
6 THE COURT: You may.
7 (Pause.)
8 MR. LYDON: I have no other questions.
9 THE COURT: All right. Mr. Parrish, do you
10 wish to inquire?
11 MR. PARRISH: Yes, thank you.
12 I'm going to make a slight podium adjustment.
13 CROSS-EXAMINATION
14 BY MR. PARRISH:
15 Q. Good afternoon, Mr. Eastman. How are you
16 doing?
17 You and I haven't talked before, have we, sir?
18 A. No, we haven't.

19 Q. Okay. I just -- I want to ask a few more
20 questions. I'm the last guy and I've tried to cut out
21 what Mr. Lydon talked about.
22 A. You're a formidable last man.
23 Q. Thank you, sir.
24 You know what ego is, don't you, Mr. Eastman?
25 A. Which?

3084

1 Q. You know what ego is, don't you?
2 A. I certainly do, yes.
3 Q. And I don't mean that in a bad sense.
4 A. I don't either, no.
5 Q. I mean that ego in the sense of a reference to
6 a person's sense of self.
7 A. Yes, sir.
8 Q. Is that what you understand by that term?
9 A. Yes, sir.
10 Q. Okay. And do you agree that ego, your sense
11 of self, has always been a very important part of who
12 John Eastman is?
13 A. I think it is a part of what John Eastman
14 aspires to be.
15 Q. I mean let's face it, you were always a pretty
16 ambitious fellow, weren't you, sir?
17 A. Yes, sir.
18 Q. And there was nothing wrong with Iowa. Iowa
19 is a fine place, but you didn't want to spend your whole
20 life in Iowa, did you?
21 A. Not at first.
22 Q. You had dreams, right?
23 A. Yes, sir.
24 Q. You had dreams of success, accomplishment?
25 A. Yes.

3085

1 Q. Celebrity, even?
2 A. Oh, yes.
3 Q. That you formed by listening to the radio as a
4 young boy?
5 A. Yes, sir.
6 Q. And the radio in those days -- and I think you
7 said it in response to Mr. Acosta, it was a romantic
8 thing. It brought other worlds, people, news, music to
9 your home, correct?
10 A. Yes, sir.
11 Q. And what you heard on the radio it shaped, at
12 least in part, the plans and the dreams that you created
13 for yourself, correct?
14 A. Well, that other people had gone before me and
15 creating for me.
16 Q. At least in part these images that you got
17 from the radio, it shaped a lot of your plans and
18 dreams, correct?
19 A. Yes.
20 Q. But a dream, any dream, without a plan,
21 without drive, without hard work, without action, is
22 unlikely ever to be realized, isn't it, sir?
23 A. That's right.
24 Q. Now you've worked hard your whole life,
25 haven't you?

3086

1 A. Yes.
2 Q. Like you told us in direct examination, like
3 in basic training, you got an award for "Courage Under

4 Fire" in basic training because you decided to be better
5 than anyone else and you were; is that right?
6 A. That's right, yes.
7 Q. Now, like a lot of us -- like all of us, the
8 breaks didn't always go your way, professionally or
9 personally, did they?
10 A. Right. No.
11 Q. Sometimes it was your choice -- for example,
12 you quit or you left some jobs on principle because of
13 what you believed, your sense of right and wrong,
14 correct?
15 A. Yes, sir.
16 Q. And other times, it wasn't your choice. I
17 mean, you lost some jobs too over the years, right?
18 A. Do what?
19 Q. You lost some jobs against your will over the
20 years a few times? You were fired I think were your
21 words?
22 A. Fewer than other.
23 Q. Yes.
24 Maybe the place or the job wasn't a good fit
25 and maybe the ratings weren't what the management

3087

1 expected, but that's the nature of show business, right?
2 A. Oh, yes.
3 Q. But you always managed to pick yourself up,
4 dust yourself off, and move on to new challenges and
5 adventures, correct?
6 A. Yes.
7 Q. And the decision you made to continue your
8 journey, to push on toward the fulfillment of your
9 dreams, as well as your obligations in your life, was a
10 choice you made, correct?
11 A. To go on?
12 Q. Yes, sir. To continue your journey of life,
13 to face the challenges of life?
14 A. You mean in a survival sense?
15 Q. In a sense of pursuing life, going through
16 with your life, your dreams?
17 A. What's choice do I have? The guy shows
18 there's a little place in the mind here on a drawing
19 just the other day where there are two or three things
20 you got to do.
21 Q. I understand.
22 A. And that's what I got to do.
23 Q. I understand. And certainly --
24 A. Survival.
25 Q. I'm sorry, are you through, sir?

3088

1 A. Survival.
2 Q. I'm sorry.
3 A. Excuse me.
4 Q. Are you through with your answer?
5 A. I'm through now.
6 Q. Okay. I'm sorry.
7 A. That's that ego.
8 Q. Certainly sometimes it might have been -- it
9 might have seemed easier to you, perhaps, to just give
10 up instead of pushing forward, just give up; that would
11 have been an easier road sometimes, right?
12 A. No.
13 Q. Not for you?
14 A. No, sir.

15 Q. Okay. Well, sometimes you were required to
16 relocate?

17 A. Yes.

18 Q. And that can be a difficult and stressful
19 thing to do, right?

20 Relocating?

21 A. No. To some people it is.

22 Q. But you did it in any event, right?

23 A. Yes.

24 Q. And you did it over and over again?

25 A. Yes.

3089

1 Q. In fact, back in the late '40s until the 1990
2 you worked pretty much from coast to coast?

3 A. Yes, sir.

4 Q. California, Iowa, Alabama, Texas,
5 Pennsylvania, Virginia, Florida?

6 A. Yes, sir.

7 Q. You persisted?

8 A. Yes, I survived.

9 Q. You never threw in the towel or gave up, did
10 you, sir?

11 A. No, sir.

12 Q. Because you believed in yourself, you believed
13 in your abilities, and you believed in your dreams and
14 goals, didn't you, sir?

15 A. The last sentence?

16 Q. You believed in your dreams and your goals?

17 A. I believed that the system was going to open
18 if I kept playing at the doors.

19 Q. Okay. And to see -- to succeed, as you did,
20 to be able to say, as you can, that you not only had
21 your own radio programs, you had your own television
22 program, you had to be willing to fail, right? You have
23 to take that chance?

24 A. Every day.

25 Q. Because there's no guarantee of success with

3090

1 much of anything in life, is there, Mr. Eastman?

2 A. No degree -- no guarantee of success in
3 anything in life?

4 Q. There's no degree of success with much of
5 anything in life, is there?

6 A. Oh, I would put it differently, but I think
7 there is a degree of success that is anticipated in
8 life; quite correctly, you can anticipate it if you do
9 the right things, if you manage it in the right way,
10 there's a better chance for success. So I would never
11 say that there's no chance for success.

12 Q. Well, I didn't say "chance," I said
13 "guarantee," but let's move on, I agree with you.

14 To fulfill your dreams, you had needed to
15 first -- first have a dream, right?

16 A. Yes.

17 Q. Next you needed to develop a plan of action --

18 A. Yes.

19 Q. -- for how you were going to make the dream
20 happen, correct?

21 A. Yeah.

22 Q. And then you need to motivate yourself to do
23 what it was going to take to succeed as a writer or a
24 broadcaster, correct?

25 A. Yes, sir.

1 Q. And then it was necessary for you to put your
2 career plans into action, right?

3 A. Yes, sir.

4 Q. Because the things you wanted, radio and
5 television shows, a successful career in broadcasting,
6 children you can take pride in, those things weren't
7 going to happen without some input from you, unless you
8 worked on your dreams and plans, correct?

9 A. Yeah.

10 Q. You had to want those things to happen, didn't
11 you, sir?

12 A. Yes.

13 Q. And then you had to be willing to do the
14 things necessary to put yourself in a position to seize
15 opportunities, as they might have presented themselves
16 to you, in life, correct?

17 A. Yes.

18 Q. I mean, you've earned whatever success or
19 accomplishment has marked your life, correct? You've
20 earned it?

21 A. Yes.

22 Q. Nobody did it for you or handed it to you?

23 A. No.

24 Q. There was no magic bullet for guaranteeing
25 success in your line of work, was there?

1 A. But you're taking me back to ego now. There's
2 no single success I've ever had that was individual.

3 Q. Fair enough.

4 But there's no magic bullet. We can't go out
5 and we can't buy success. It takes hard work and
6 creativity and motivation and a plan and an action,
7 right?

8 A. You can buy it, but you can't last at it.

9 Q. Well, if there was a magic bullet where we
10 could all go out to the store and buy it, I mean, we
11 might all be Larry Kings or Rush Limbaugh's or Bill
12 O'Reilly or John Eastman's with our own radio or
13 television shows?

14 A. I think a couple of those guys are suspect for
15 having bought it, but --

16 Q. Okay. Well, I'm not as smear of that as you
17 are, sir.

18 Well, it isn't that way in this life, is it,
19 Mr. Eastman, you can't buy that magic bullet?

20 A. You can't, sir.

21 Q. Well, the fact is that not everybody who
22 pursues a broadcasting career ever finds or enjoys the
23 measure of success which you created for yourself, do
24 they?

25 A. I got a humble piece of the pie, really, by

1 all stretch of the imagination.

2 Q. Well, I understand there had to be a little
3 bit of luck involved in your success, but you did have
4 to prepare yourself; you got to be ready. You got to be
5 ready to take advantage of opportunities as they
6 presented themselves, right?

7 A. Right.

8 Q. And you did what you had to do to get where
9 you wanted to go in life, right?

10 A. So far.

11 Q. And when you wanted Hollywood, for instance,
12 you found a way to get yourself there, correct?
13 A. Yeah.
14 Q. At least once -- or I think twice you told us
15 I think, I wasn't clear on that. You hitchhiked clear
16 across country to California?
17 A. Yeah.
18 Q. To get to Hollywood and Vine?
19 A. Yeah.
20 Q. And you did not let much of anything sidetrack
21 you or get in the way of your ambition or your dreams,
22 did you, sir?
23 A. Yes, I did lots of things to get in my way.
24 Q. Well, in the '50s, I think you told us about
25 your first wife Betty Lou. She told you that she didn't

3094

1 share your enthusiasm for show business in Hollywood;
2 and you chose, I think you said, your career goals over
3 marriage; is that right?
4 A. She chose a dentist over -- over Gene Autry,
5 that's the truth.
6 Q. Well, in the '60s, when your third wife,
7 Ms. King, Alene King --
8 A. Yeah.
9 Q. -- when she told you that she didn't share
10 your enthusiasm for show business in Hollywood, you
11 chose your career goals over that marriage?
12 A. No.
13 Q. You told us the promise you made. You chose
14 that by writing and selling an episode I think it was
15 the "Fugitive," a popular television show in the '60s?
16 A. No, no, no. I came home, I gave into her.
17 And I said, "No, no, we won't go Hollywood. I'll stay
18 with you. I'll stay here on a farm. Get a white-picket
19 fence. I'd join you. I'm with you." She left anyway
20 and she went back and married Larry King.
21 Q. I was talking about the first time when you
22 went out to Hollywood --
23 A. What are you talking about?
24 Q. -- to sell the "Fugitive." Did I miss that?
25 Did I get that wrong?

3095

1 A. You missed the drama.
2 Q. Well, let me get back to the facts. I'm not
3 much for drama, but I would ask you a few facts.
4 A. Sure.
5 Q. I thought that you told us the reason for the
6 break up with Alene King was that you chose to go to
7 Hollywood, you broke a promise you made to her; that's
8 all I was asking.
9 A. We caught her in a -- we caught her in the bus
10 station and we brought her home. And I came home on the
11 next plane, and I gave up those three things I got;
12 enter into the Guild, options to do two more for Quinn
13 Martin. I took the writer's -- second writer's job and
14 got \$20,000 less money than I should have gotten, and I
15 stayed in Iowa. And we tried to do it all there in our
16 little backyard, and she still went back to Miami.
17 Q. I understand all that.
18 A. And she still calls me every now and then and
19 says what happened to us?
20 Q. I think the last part of what you told me I
21 think -- took a little English -- that would be called a

22 dae du mon (phonetic)?
23 A. What?
24 Q. The last part you told me about, how it worked
25 out, when she still left you, that's called a dae du
3096
1 mon (phonetic)? That's how things play out towards the
2 end?
3 A. Well, it's just how it is with real people.
4 Real people don't -- aren't mannequins, they're real
5 people.
6 Q. I wouldn't -- were you through with your
7 answer? I'm sorry.
8 A. I'm through.
9 Q. My question really didn't have anything to do
10 with how it worked out, I was really at the step one.
11 If we could just --
12 A. All right, go ahead.
13 Q. -- focus on that for a moment.
14 A. I know.
15 Q. In the '60s, when your third wife, Alene
16 King --
17 A. Yeah.
18 Q. -- told you that she did not want to go to
19 Hollywood, a promise you had made to her, you wouldn't
20 do that. I think you said you left -- she was a Playboy
21 Bunny in Miami and you were working in the radio
22 station, you left that life. You made a moral choice
23 and moved out to Iowa. And I think you said to the jury
24 that basically you broke the promise and you made a
25 choice and went to Hollywood; is that right?
3097
1 A. Yes.
2 Q. Thank you.
3 The point I'm really trying to make is that
4 when you got single minded about something important to
5 you, when you really focused --
6 A. You're such a nice man. I want you to have
7 that point, but you can't have it.
8 MR. PARRISH: Your Honor --
9 MR. ACOSTA: I'd object to the extent of the
10 argument going on back and forth.
11 THE COURT: Well, it's all right for the
12 witness to anticipate what he believes the question
13 might be, but you still have to remain silent and
14 then answer the question without commenting upon
15 the question.
16 So if you could start the answer again.
17 MR. PARRISH: Your Honor, if I could just go
18 back.
19 May I proceed?
20 THE COURT: Proceed.
21 BY MR. PARRISH:
22 Q. The point is that when you got single minded
23 about something important to you, when you really
24 focused, you had the ability to make things really
25 happen for yourself; isn't that true?
3098
1 A. More often than not.
2 Q. And things were never easy for you. I mean in
3 the sense the business you were in, the career you chose
4 for yourself, it's not easy business, is it?
5 A. No, it's not.
6 Q. There's a lot of people scrapping out there

7 that want to be John Eastmans?
8 A. Yes.
9 Q. So you used -- using your love of writing and
10 your knowledge of film making, which you taught
11 yourself, right?
12 A. Yes.
13 Q. You invented work for yourself? You went out
14 and got it? You developed it? You created it?
15 A. Yes.
16 Q. And I think you -- many times you would study
17 a foreign subject matter and write scripts?
18 A. Yes.
19 Q. Correct?
20 A. Yes.
21 Q. Some people have described you as a
22 master-story teller? Creative genius?
23 A. We all write term papers if we went to school.
24 Q. I'm sorry, I didn't --
25 A. We all write a term paper, it's the same

3099

1 thing. It's a term paper. It's a script. It's a piece
2 of organized writing. It's a letter home.
3 Q. Master-story telling just comes easy to you
4 it's what God gave you, right?
5 A. It's a good letter.
6 Q. I didn't not understand your response.
7 A. Writing is a simple matter. You just learn
8 how to put thing in order and it comes out at the end,
9 sincerely yours.
10 Q. You study a subject and then you just --
11 you're able --
12 A. Yeah, you organize the material and you put it
13 in. It's not a huge difficulty thing. If people saw me
14 explain it to you and let you go through it, and you've
15 taken -- and you've written courses and you've written
16 things in school. It's the same thing magnified a
17 little bit. It's not untouchable or unreasonable. It's
18 available.
19 Q. So if you study a new -- a new subject matter,
20 a new forum for you that you weren't in, you're able to
21 take that knowledge that you learned from the beginning
22 and you can portray that and create an effective story?
23 A. Yeah. You can, yes.
24 Q. Okay. Among other things, you created your
25 own film production company and you went out and you

3100

1 looked for clients and business, correct?
2 A. Yes, I did.
3 Q. You made commercials and you made commercial
4 films, correct?
5 A. Yes.
6 Q. You did that for corporations as well as state
7 governments and other organizations?
8 A. Yes.
9 Q. I think you pretty much handled all of the
10 facets of the business -- all facets of businesses like
11 that, correct?
12 A. Yes. Yes.
13 Q. And in this way you supported your wife and
14 family?
15 A. Yes.
16 Q. Wife and family.
17 The point is that you made things like that

18 happen for yourself, right?
19 A. In concert with a lot of other good people.
20 Q. And there were many similar projects over the
21 years just like that where you had a dream or a goal,
22 and you pushed yourself one step at a time in the
23 direction with success, your success, success as you
24 defined it, required you to go, correct?
25 A. In concert with other people.

3101

1 Q. I understand you're being humble and I
2 appreciate --
3 A. I'm not being humble. If I had the time to
4 explain to you that a photographer can go out in the
5 morning and shoot one shot and bring it home, that
6 typifies everything you intend to say, then you say it.
7 So he did it.
8 Q. I understand.
9 In the end, Mr. Eastman, would you agree that
10 a thinking person's life is hopefully about dreams and
11 goals, direction, action and persistence?
12 A. Follow your instincts.
13 Q. But you agree with the thing I said as well?
14 You agree with that?
15 A. As long as you follow the truth, you'll get
16 there.
17 Q. And you -- you dream, you have goals, you have
18 direction, you take action and you're persistent?
19 A. Those are all factors.
20 Q. I might well be wrong, but -- but from what
21 I've gathered from working on this case, my guess is
22 that you've never been a man content to let life be
23 something that just happens to him. Is that right?
24 A. I thought I would not like that life.
25 Q. I expect you and I would both agree that

3102

1 you've been something considerably more than just a
2 spectator in your life, am I correct?
3 A. We're working on Henry David Thoreau.
4 Q. Records are kind of a funny thing. I
5 understand your response because I was an English major,
6 but I really would like to get a yes, if I could.
7 Was I correct?
8 A. Yes.
9 Q. Thank you, sir.
10 Because you have always found something to
11 learn and do in life, right?
12 You have to answer audibly?
13 A. Yes.
14 Q. I'm sorry. Everyone does that.
15 A couple weeks ago I thought I heard you say
16 something here in court on a break, it was a quote. You
17 said something like "The unexamined life is not worth
18 living."
19 Do you remember saying that?
20 A. Yes.
21 Q. Plato, the philosopher, said that, didn't he?
22 A. I thought it was Henry David, but --
23 Q. Who?
24 A. I thought it was Henry David Thoreau.
25 Q. Henry David "On Waldon Pond"?

3103

1 A. Yeah.
2 Q. He said --

3 A. Most men live --
4 Q. Whether it was Henry David or it was Plato, I
5 think you also said, "The life which is unexamined is
6 not worth living"? Correct?
7 A. Yes, right.
8 Q. What does that statement mean to you, sir?
9 That an unexamined life is not worth living?
10 A. What it means -- if you go through it, if you
11 live it, you got to turn out and find out where you've
12 been, who was with you and along the way and say thank
13 you to them.
14 Q. But it also refers to the value and importance
15 of reflection, of thinking, of living a life that has
16 purpose and meaning, correct?
17 A. It's --
18 Q. Would you like a moment, sir?
19 A. What it's all about. You're asking about what
20 is life about. It's about having existed and listened
21 and paid attention to where you were and who you are
22 with; what's right, what's wrong. Who is good, who is
23 bad, making judgments and being right more often than
24 being wrong.
25 Q. That's part of reflecting upon life and trying
3104
1 to live --
2 A. It's a really heavy trip.
3 Q. That's part of reflecting on your life and
4 trying to do something that has purpose and meaning?
5 A. It better be important to you or you'll be
6 terribly unhappy.
7 Q. You've tried to do that, didn't you, sir?
8 A. Yes.
9 Q. And you've certainly had occasion to examine
10 not just life in general, but your life in particular;
11 isn't that true?
12 A. I tried.
13 Q. In the late 1950s, early 1960s, you were
14 diagnosed with cancer, weren't you?
15 A. Yes.
16 Q. The cancer was surgically removed?
17 A. Yes.
18 Q. But then you also had to undergo radiation
19 therapy?
20 A. Yes. Yes.
21 Q. Do you need to take a break a moment?
22 A. No, I'm all right. I'm fine.
23 Q. Now, quite understandably, your experience
24 with cancer forced you to examine, to think a bit about
25 your own life and how you had been living it up to that
3105
1 point, right?
2 A. Yes.
3 Q. Like Henry David. Like Henry David Thoreau?
4 A. Yes.
5 Q. Knowing that you had cancer, I suspect that
6 there was a part of you deep down that was afraid your
7 cancer might one day return, I think you've told us
8 about that?
9 A. Of course.
10 Q. This was back in the '50s and '60s, at the
11 time of your --
12 A. Of course.
13 Q. -- self examination.

14 A. Of course.
15 Q. In fact, it doesn't get much basic or start,
16 more black or white, than life and death, does it, sir?
17 A. Well, the courtroom we're sitting in now got a
18 nice piece the other day with the current situation I'm
19 facing was brought to mind.
20 Q. But didn't shrink or run away from that
21 experience, did you?
22 A. I haven't yet, no.
23 Q. You faced that risk, you examined what you
24 might do about it yourself?
25 A. Yes, sir.

3106

1 Q. And among other things you examined some of
2 the choices you had to make in your life, right?
3 A. Yes.
4 Q. Choices you had to -- choices that you had
5 made about alcohol?
6 A. Yes.
7 Q. Choices about -- you were very candid --
8 relationships with women? You examined those choices
9 that you had made, correct?
10 A. Yes, dual choices there however; that's never
11 a one-way street.
12 Q. And you -- at that moment you stopped and
13 looked inside John Eastman and you examined the choice
14 you made about cigarette smoking, correct?
15 A. No, sir, because I think I was addicted. And
16 I think that you people addicted me. And I think you
17 knew it and I didn't know it, and I lived in darkness
18 for years.
19 Q. In -- in the late 1950s, early '60s when you
20 had the cancer surgery, is it your testimony that you
21 did not examine the choice you had made about cigarette
22 smoking?
23 A. I'm objecting to the word "choice." I don't
24 think I had a choice at that time. I think you took it
25 from me.

3107

1 Q. Well, you made a decision and you made a
2 decision at that point to go on smoking based upon what
3 was important to you, correct?
4 A. I went on -- I went and made a choice in
5 ignorance, yes.
6 Q. But you made that choice knowingly
7 nonetheless, correct?
8 A. I had no knowledge of what you knew. I
9 made -- I had no knowledge of what you knew. I had no
10 knowledge of the nicotine addiction in that operating
11 room in that day.
12 Q. You came up to a point in life, you thought
13 about the fact that you were smoking; you had a
14 discussion with yourself whether you were going to do
15 that in future, and you continued to do it in the
16 future, correct?
17 A. I continued to do it in ignorance.
18 Q. Whether it was in ignorance or not, that was a
19 choice, correct, sir?
20 A. I did it.
21 Q. And you continued to smoke cigarettes until
22 1995, when you were hospitalized for respiratory illness
23 and you then quit smoking, correct?
24 A. Yes.

25 Q. And the evidence we've heard in this case, I
3108
1 think you told us just a moment ago, that you have not
2 smoked cigarettes, not one single cigarette since you
3 quit smoking in June 1995; is that correct?
4 A. That's true, yes.
5 Q. You smoked for many years, about 50 years
6 actually, before quitting for good almost eight years
7 ago in 1995, right?
8 A. Yes.
9 Q. And if you had ever been tempted to smoke a
10 cigarette, a single cigarette since that time in 1995,
11 you have successfully resisted that temptation, that
12 urge, correct?
13 A. Yes.
14 Q. You were here when Dr. Jacobs, one of your
15 experts, testified early in this case, weren't you?
16 A. Yes.
17 Q. I believe he was the first expert that
18 Mr. Acosta called.
19 Do you remember him talking about addiction?
20 A. Yes.
21 Q. And I think he said that the choice to stop
22 smoking is one that an individual has to make and act
23 upon daily, right?
24 A. Yes, I assume he said that.
25 Q. And I think he said, "one way you might deal
3109
1 with any temptation you might feel to smoke cigarettes
2 would be to remind yourself of the choice you made eight
3 years ago to stop smoking cigarettes because of health
4 hazards that accompany that choice," right?
5 A. You have to help me with that. Repeat that,
6 please.
7 Q. Okay. Well, Dr. Jacobs told us, as you just
8 acknowledged, that the choice to stop smoking was one
9 that an individual had to make and act upon daily,
10 right?
11 A. I think, yes.
12 Q. Okay. And the way that you dealt with the
13 temptation you might have felt to smoke cigarettes, that
14 you talked to Mr. Acosta about, would be to remind
15 yourself of the choice you made eight years ago to
16 smoking, correct?
17 A. If -- if eight years ago in 1995 I had made a
18 choice to quit smoking, I would agree with you.
19 However, it happened in a different sequence. I got
20 sick, went to the hospital, stayed there for ten days,
21 detoxified. Got the nicotine out of my system, came
22 home, didn't need a cigarette, was on oxygen, didn't
23 want one. And by the time I got around to wanting one,
24 didn't need one. So the sequence of events was not
25 based on choice.
3110
1 Q. Whenever you were attempted since then, you
2 could focus back on that moment and it reinforces you
3 and you continue in your persistence not to smoke?
4 A. I wouldn't work it that way. I work it back
5 to the truth.
6 Q. You consider yourself to be a reasonably
7 intelligent person, don't you, sir?
8 A. Do I what?
9 Q. You consider yourself to be reasonably

10 intelligent, don't you, sir?
11 A. Yeah, I guess I do.
12 Q. And I think you said before you like to read
13 veraciously?
14 A. I like to read.
15 Q. Both your parents went to college?
16 A. Yes.
17 Q. Just give me a little background here. Your
18 father, I think you told us, was a medical man, a
19 veterinarian?
20 A. Right.
21 Q. And although you left college yourself, I
22 think without ever graduating, you did attend colleges
23 in both Florida and Iowa for several years?
24 A. Yes.
25 Q. And college was where you discovered your love
3111
1 of writing and broadcasting, wasn't it?
2 A. Yes.
3 Q. You even wrote for college newspapers and
4 magazines, didn't you, sir?
5 A. Yes.
6 Q. And it was while working on college newspapers
7 and magazines that you learned how to write and put
8 together advertising materials and copy, correct?
9 A. Yes.
10 Q. What is "copy"?
11 A. Copy are the words that a company advertises.
12 Q. It's the script?
13 A. That's the headline. There's the headline,
14 then there's the copy; there's the body copy, and
15 there's a tag line.
16 Q. So you're working putting the advertising
17 together, whatever the components are?
18 A. Right.
19 Q. And you also studied advertising some in
20 college, didn't you, sir?
21 A. Yes, took the course.
22 Q. And it was in college that you first found
23 work in broadcasting? Radio broadcasting, correct?
24 A. Yes.
25 Q. And except for a brief stint in the Air Force
3112
1 in the early 1950s where you received training, I think,
2 as historian; is that right?
3 A. Ended up an historian.
4 Q. Okay. Except for that stint in the Air Force,
5 you spent almost your entire career working in radio and
6 television broadcasting, correct?
7 A. No. It oddly works that I worked almost as
8 much in independent film making.
9 Q. If I add independent film making to the list,
10 it would be true that you spent your entire career in
11 radio and television, broadcasting, and independent film
12 making?
13 A. Yes.
14 Q. Okay. And a career that has lasted almost 50
15 years, correct?
16 A. Yes.
17 Q. Now one of the major ways in which radio and
18 television stations make money is by selling advertising
19 at the time, correct?
20 A. Yes.

21 Q. And the things radio and television stations
22 use to fill that time are called commercials, right?
23 A. Yes.
24 Q. Without advertising, without commercials,
25 people like you and people who have radio and television

3113

1 programs, would not get paid or even have a job,
2 correct?
3 A. Yes, that's true.
4 Q. And the programs you hosted were no different,
5 were they, Mr. Eastman?
6 A. No, they needed advertising.
7 Q. And the people who listened your program also
8 had to listen to commercials, didn't they?
9 A. Yes.
10 Q. Sometimes you read the commercial yourself?
11 A. Yeah.
12 Q. And sometimes you even used your own personal
13 experience to sell particular products, correct?
14 A. Yes.
15 Q. Now, I'm going to try not to be redundant,
16 this was covered a little earlier by Mr. Lydon. One of
17 products you advertised on your radio show was called
18 "Smoke Enders," wasn't it?
19 A. Yes.
20 Q. Now "Smoke Enders" was a cessation product, as
21 I understand it. It was a product that was supposed to
22 help people stop smoking, correct?
23 A. Yes.
24 Q. But the way it happened, you didn't go seek
25 out "Smoke Enders," as a product to help you quit

3114

1 smoking, did you, sir?
2 A. No.
3 Q. And advertising did not make you use "Smoke
4 Enders," did it, sir?
5 A. No.
6 Q. Advertising did not make you do something you
7 did not want or were not ready to do, did it, sir?
8 A. No.
9 Q. Let's talk for a moment about health risks of
10 smoking for a second.
11 You started smoking in the 1940s, I believe
12 you told us?
13 A. Yes.
14 Q. By the way, when you smoked Lucky Strikes in
15 the -- whenever it was, the '40s, '50s, you also smoked
16 other brands at the same time, didn't you, sir?
17 A. Well, I called it fishing around, but I had a
18 primary love for Lucky Strikes.
19 Q. But you had smoked a lot of other type of
20 brands, right?
21 A. Yes.
22 Q. Okay. And you did not ever expect or want to
23 get sick from smoking cigarettes, did you?
24 A. No.
25 Q. And the entire time that you smoked

3115

1 cigarettes, you knew that the choice you had made to
2 smoke was associated with serious disease and illness,
3 correct?
4 A. No, sir, you're putting choice back into it
5 again and I can't -- I cannot agree that I -- I looked

6 at it as a choice. I was swept up into -- if you would
7 have lived in that day -- I remember the first afternoon
8 of 1941 when we bombed Pearl Harbor and I came out and
9 wrote "Jap" in the snow, and everybody was smoking
10 cigarettes. It was patriotic to smoke cigarettes in
11 1941.

12 Q. Your problem, I think with my question was the
13 fact that I incorporated the use of the word "choice" in
14 there?

15 A. Yes, sir.

16 Q. Okay. Let me see if I can take that out and
17 see if we can reach agreement.

18 The entire time that you smoked cigarettes,
19 you knew while you were smoking that cigarette smoking
20 was associated with serious disease and illness,
21 correct?

22 A. I knew that it could be and that it was -- it
23 was -- that it was rumored to be at first.

24 Q. I'm sorry, did I cut you off?

25 A. No, it's all right.

3116

1 Q. In fact, you said that you couldn't grow up in
2 this world from 1940 on and not have somebody tell you
3 that don't, not to smoke, because it burns holes in your
4 clothes, you'll die in bed or you'll set your house on
5 fire or you'll get a disease or you'll -- something will
6 happen to you; is that correct, sir?

7 A. Yes. And the end of that, it gives you the
8 factiousness with which I said it. The end of it also
9 says in the same breath that in that time, 1940, people
10 were saying that -- that lawyers and used car salesmen
11 could be thought of in the same breath.

12 Q. You're not saying that I didn't read your
13 whole statement are you, sir?

14 A. Yeah, I'm saying that you didn't read it.

15 MR. PARRISH: Can we put up slide 103.5.1,
16 please?

17 MR. ACOSTA: Well, Judge, I don't understand
18 why that would permit this to go up.

19 MR. DENSON: Take it down, please.

20 MR. ACOSTA: Just because he said he didn't
21 think he read the whole thing, I don't understand
22 where this is coming from. I --

23 THE WITNESS: Continued in the same sentence
24 to say it. I looked it up -- and I saw it, I
25 looked it up.

3117

1 MR. PARRISH: That's why, Your Honor. That's
2 why I asked him if he thought I cut him off, and
3 I'm trying to demonstrate that's not what happened.

4 MR. ACOSTA: Well, I don't think counsel has
5 to -- has to -- has to prove that.

6 THE COURT: Well, I believe that the witness's
7 objection to the manner of the question was that
8 the entire response had not been included, and so
9 he was providing the entire response.

10 MR. PARRISH: Precisely.

11 MR. ACOSTA: I understand, except he's -- he's
12 entitled to ask him a question but he isn't
13 entitled to show him the question and the answer
14 unless he's impeaching him, and that wasn't
15 impeachment, so I -- it doesn't happen --

16 THE COURT: Well, I'm going to permit it. I

17 think it could be two ways; he could either read
18 the entire thing or show it to him if that's an
19 easier way to do it. So, I'll permit it.

20 BY MR. PARRISH:

21 Q. Mr. Eastman --

22 MR. ACOSTA: Could I get the page number,
23 please?

24 MR. PARRISH: I'm sorry, Howard. It's 237, 9
25 through 25.

3118

1 Could you back out the blowup for me so we can
2 see the whole pages?

3 I think what we've got here is what we call a
4 scrunch with 237 through 240, and then we've taken
5 out the question. And so we can start here, if you
6 want. I believe this is the blowup here. I think
7 this is what you're talking about. You could
8 blowup the thing again -- blow out and then we'll
9 go the rest of it again. That's 103.5.1.

10 "QUESTION: Did you sense any different taste
11 or smoothness or any other characteristic of the
12 smoke of a filtered cigarette over an unfiltered
13 cigarette?

14 "I suppose there's a notion that one is less
15 hot than the other. I don't know quite how that
16 translates in a meaningful way because I know what
17 a cigarette is, what it contains, or what it
18 partially contains, and I knew what I was smoking.
19 And for all the reasons that people -- you couldn't
20 grow up in this world from 1940 on and not have
21 somebody tell you that, don't, not to smoke because
22 it burns holes in your clothes or you'll die in bed
23 or you'll set your house on fire or you'll get a
24 disease or you'll -- something will happen to you,
25 right?"

3119

1 Now if you go back --

2 MR. ACOSTA: It's not over.

3 MR. PARRISH: That's what I'm getting ready to
4 do, Mr. Acosta.

5 BY MR. PARRISH:

6 Q. Then -- the rest of answer says, "Then they
7 say the thing about Coca-Cola. Don't drink Coca-Cola.
8 Don't drink beer. Don't cross the street. Don't take a
9 cab. Don't listen to the John Eastman Show." Is that
10 what you are talking about, Mr. Eastman?

11 A. In my deposition -- I went back and read all
12 my depositions, and I found a completely different
13 answer. And I thought I was -- I was -- the whole thing
14 I was answering you facetiously. That was my point,
15 that I was answering you on the kid. I was kidding you,
16 because at the end of it I made a remark about lawyers,
17 and I thought -- it wasn't meant to convey laughter, a
18 joke.

19 MR. ACOSTA: And I think in fairness, Judge,
20 the next question and answer need to go with that.

21 MR. PARRISH: That's fine. You roll it, if
22 you can.

23 THE COURT: The "life is full of risks"
24 question?

25 MR. ACOSTA: Yes, sir.

3120

1 THE COURT: All right.

2 MR. PARRISH: I believe he said it was another
3 deposition transcript, but that's fine.
4 MR. ACOSTA: No, it's right here.
5 MR. PARRISH: Can you buzz up?
6 "Life is full of risks. You can't go anywhere
7 that they aren't going to -- they aren't going to
8 tell you that. Lawyers are -- what are lawyers?
9 They're next to used car salesmen, huh?
10 "Objection.
11 "Well, see, I don't mean to be opinionated
12 here, but you know as well as I do that I
13 everybody's got an opinion about everything. It's
14 a free country and we're reasonable men."
15 Question: "I couldn't agree more. Right?
16 All right. When you switched to cigarettes from a
17 nonfilter to a filtered cigarette, did you change
18 anything else about how you smoked? Some ashtray
19 -- same ashtray?
20 "no, I never had the same ashtray, nor baby
21 shoes on the -- or anything as I drove my car, or
22 anything like that."
23 Is that how you want it read?
24 MR. ACOSTA: That's fine.
25 MR. PARRISH: Could we have the blowup,

3121

1 please.
2 BY MR. PARRISH:
3 Q. So what you're saying, Mr. Eastman, is that
4 these -- first of all, these were yours words, right, at
5 least in the answer.
6 A. Yes.
7 Q. You did say --
8 A. Yes.
9 Q. -- these things. You said that --
10 MR. DENSON: Asked and answered, Judge.
11 Objection.
12 BY MR. PARRISH:
13 Q. "I knew what I was smoking, and for all the
14 reasons that people -- you couldn't grow up in this
15 world from 1940 on and not have somebody tell you that
16 don't -- not to smoke, et cetera, you'll get a disease
17 or something will happen to you." Those were your words
18 in the deposition, right?
19 A. Yes.
20 Q. All right. And you've explained what you
21 meant by it, right?
22 A. I said it was facetiously put.
23 Q. Okay.
24 MR. PARRISH: We can take it down.
25 BY MR. PARRISH:

3122

1 Q. Now, when articles about smoking and disease
2 appeared in newspapers and magazines, you did not ignore
3 them, did you, sir?
4 A. No.
5 Q. Because of your voracious reading habits, you
6 would have read most of them, correct?
7 A. Not necessarily. I would say I would have
8 read them probably.
9 Q. I'm sorry, I didn't --
10 A. Probably I would have.
11 Q. Probably. Well, you read everything that came
12 down the pike, right?

13 A. Well, that's an exaggeration too.
14 Q. But those were your words, right?
15 A. Yes. And they were exaggerations. That was
16 an exaggeration.
17 Q. So when you gave your deposition on three
18 occasions, were you exaggerating?
19 A. I don't think so. Which pages you want? I do
20 exaggerate from time to time, as you do. And I don't --
21 I don't know, just --
22 Q. Have you exaggerated today, sir?
23 A. No, sir. I'm trying to be honest today.
24 Q. You knew and have heard about the connection
25 between cigarette smoking and certain respiratory

3123

1 illness, including lung cancer, correct?
2 A. Yes.
3 Q. Let's talk about addiction briefly.
4 You were not only away of, but also had
5 thought about for many years, what you considered
6 to be addictive qualities of cigarette smoking,
7 correct?
8 A. At what point are you talking about? At what
9 point did I decide to talk about addiction?
10 Q. Well, I'm not sure what question you asked me.
11 Are you asking me what you said in your deposition?
12 A. You'll have to repeat it with some reference
13 to my -- where in my life and my --
14 Q. Well, what I'm doing is just asking questions.
15 Let me repeat the question, and then maybe --
16 A. Okay. All right. You mean at this point in
17 my life.
18 Q. Well, I think the question was clear. But if
19 it's not --
20 A. Okay.
21 Q. -- you can tell me you don't understand, and
22 I'll try to ask it again.
23 A. Okay.
24 Q. Can we do that?
25 A. Sure.

3124

1 Q. You were not only aware of, but also had
2 thought about for many years, what you considered to be
3 the addictive qualities of cigarette smoke, correct?
4 A. I didn't --
5 MR. ACOSTA: Place and time.
6 MR. PARRISH: Well, let's do this.
7 BY MR. PARRISH:
8 Q. You began thinking about addiction and why you
9 smoked back around 1960 when you were diagnosed about
10 cancer?
11 A. No, no, no. I didn't begin to seriously think
12 about cigarettes may be addictive.
13 Q. Well, there came a time, in your words, when
14 you had to recognize to yourself --
15 A. Yes, I've admitted to that. When I gave up, I
16 admitted that they were addictive. But I knew before
17 then that I was -- I knew when the times I couldn't quit
18 that they were addicted -- I was addicted. I knew that,
19 but I couldn't get a hold on it. I'm still angry about
20 the fact that you now admit that it's addictive, but you
21 say "maybe." You're back to "maybe" again.
22 Q. Pardon me, sir. I'm about done, and I just
23 have a few questions --

24 A. All right. I'm sorry.
25 Q. If you would allow me to finish my question,
3125
1 we can get done.
2 A. Okay.
3 Q. There came a time that you in your own words
4 had to recognize to yourself that if you wanted to make
5 a distinction between habit and addiction, it was there
6 to be made, correct?
7 A. No, sir.
8 Q. Those were not your words?
9 A. No, sir.
10 MR. PARRISH: Can we see Slide 103.7.1?
11 MR. ACOSTA: What page?
12 MR. PARRISH: It's 687, 23 to 688, 6.
13 A. All right. I see where you're at, yes.
14 BY MR. PARRISH:
15 Q. Okay. Let's go slowly here.
16 "Okay. So ever since you started smoking,
17 you've had this concept that were you really only
18 selecting cigarettes based on how much nicotine
19 they delivered to your system?
20 Answer: "you know, later on -- when I began
21 this conversation, I used the term "habituated."
22 There came a time that I had to recognize to myself
23 that if you want to make a distinction between
24 habit and addiction, it was there to be made."
25 A. Yes, I see that I said that.
3126
1 Q. Thank you, sir.
2 And you made that distinction of yourself in
3 1960, didn't you, sir?
4 A. I'm not sure of that date. Is that the date
5 at which I said that --
6 Q. Just answer the question.
7 A. -- that I was referring to? Okay. All right.
8 I see -- I know my problem. Yes, I'm sorry.
9 Q. You made that distinction back in 1960, didn't
10 you, sir?
11 A. No, I think it was much later than 1960.
12 Q. In 1960 you formed the belief that you were
13 smoking to get nicotine or whatever into your blood
14 system, correct?
15 A. I knew that was a part of it.
16 Q. For the -- for most the time you smoked
17 cigarettes, then, you knew and believed not only that
18 cigarette smoking could be bad for your lungs, but also
19 that it could be addictive, correct?
20 A. No, sir.
21 Q. In the '60s, at that point in your life,
22 cigarette smoking was just part of what you did, wasn't
23 it, sir?
24 A. Yes.
25 Q. And you must have liked it or you wouldn't
3127
1 have done it, correct?
2 A. I believe I said that.
3 Q. All right. I'm nearly done, Mr. Eastman.
4 Let's talking about quitting now. You smoked
5 cigarettes -- you quit smoking cigarettes in conjunction
6 with your 1995 hospitalization for pneumonia, correct?
7 A. Yes.
8 Q. And you have not smoked cigarettes since 1995,

9 am I right?
10 A. Yes.
11 Q. And you had tried on occasion to quit smoking
12 in the '90s, but you were really not in the mood to quit
13 smoking at that time in your life, were you, sir?
14 A. Unable.
15 Q. You used the word -- I believe you said to
16 Mr. Lydon you weren't in the mood to quit, right?
17 A. I may have said that, but I was -- also would
18 say I was unable.
19 Q. But your words -- when we asked about this in
20 deposition, you told us that you weren't in the mood to
21 quit smoking, correct?
22 A. All right.
23 Q. Is that correct?
24 A. Yes.
25 Q. Thank you, sir.

3128

1 The fact is at that time, Mr. Eastman, until
2 you were diagnosed with COPD, you were, quote, not
3 interested in quitting smoking, correct?
4 A. Please read it again.
5 Q. Until were you diagnosed with COPD, you were,
6 quote, not interested in quitting smoking, end quote.
7 A. If I said that, I was wrong. I meant I had
8 not been successful at quitting smoking. You should
9 know I tried.
10 Q. You don't deny telling us that in your
11 deposition, do you, sir?
12 A. Probably I said it, but I didn't mean it.
13 Q. You just smoked when you wanted to smoke and
14 that's it, correct? Those were your words?
15 A. That's pretty much -- that was my attitude. I
16 did.
17 Q. Well, that's what you told us in your
18 deposition?
19 A. Yeah, I know, I know. I like not to have said
20 it.
21 Q. I'm sorry, they teach us to get --
22 A. Yes.
23 Q. -- a yes or no answer.
24 A. Yes.
25 Q. Thank you, sir. I'm sorry?

3129

1 Until June 1995, when were you hospitalized,
2 you were just not judging the issue of your
3 cigarette smoking, were you, sir?
4 A. If I said that, I was nuts I said it. I'm
5 sorry. Yes.
6 Q. Again, you don't deny saying that in your
7 deposition?
8 A. No.
9 Q. But in 1995 your judgment about the health
10 hazards of smoking, how you judged the issue, changed,
11 didn't it, Mr. Eastman?
12 A. Yes.
13 Q. And when your own judgment about the health
14 risks of smoking changed in 1995, after your health had
15 worsened, you made a different choice from the one you
16 had made for years earlier about cigarette smoking,
17 didn't you?
18 A. Back to choice again, sir.
19 Q. Well, you decided not to smoke after that,

20 didn't you?
21 A. I said, "It came about as a different set of
22 circumstances, that I came home after having
23 detoxified," et cetera, et cetera.
24 Q. Take you home, get you out of the detox phase.
25 At some point you made a conscious decision not to

3130

1 smoke, correct?
2 A. At some far distant place I probably made a
3 conscious decision not to smoke.
4 Q. You chose not to smoke after going to the
5 hospital for pneumonia in 1995, correct?
6 A. I haven't chosen not to smoke yet, have I?
7 Q. You have made and acted upon the decision not
8 to smoke ever since June of 1995, haven't you, sir?
9 A. I have, yes. But it's still possible.
10 Q. And that's a decision or a choice -- I won't
11 quibble with the term -- that you've had to make and
12 execute by and for yourself, correct?
13 A. If I don't smoke, it will be my choice not to
14 have smoked.

15 MR. PARRISH: Thank you, sir.
16 That's all I have, Your Honor.
17 THE COURT: All right. Brief redirect?
18 MR. ACOSTA: Yes, Your Honor, very brief.

19 REDIRECT EXAMINATION

20 BY MR. ACOSTA
21 Q Mr. Eastman, you said that you smoked in
22 ignorance. Is that back in the '50s and '60s?
23 A. In the '50s and '60s I didn't smoke -- I
24 smoked without full knowledge of the information held by
25 the tobacco companies with regard to what they were

3131

1 putting in their cigarettes and what they knew.
2 Q. I believe you said that they addicted you and
3 kept you in the dark?
4 A. Yes.
5 Q. What did you mean by that?
6 A. I mean they knew that their cigarettes
7 contained addiction and they knew that addiction
8 required a certain dosage level in an individual; that
9 their cigarettes were delivery items that were just a
10 matter of -- another way of injecting it into me. They
11 knew all that. I never thought of such a thing. I
12 thought of a cigarette as a cigarette. I judged it on
13 its looks and all other attitudes, flavor, all the words
14 they gave it. They knew. It was like a syringe. And I
15 didn't know that.
16 Q. When did you find all that out?
17 A. Finding it out every day here. I found it out
18 mostly from tobacco. I found out it since they took my
19 first deposition and reading my first deposition and
20 from the people they've talked to. I've learned more
21 from the depositions they've done of other people than I
22 knew in my lifetime.
23 Q. You were asked a lot of questions about what
24 was in your deposition. Is this your deposition? Have
25 you seen this?

3132

1 A. There's three of them, I guess, yes.
2 Q. The things that you found out, are those the
3 reasons why you've come into this courtroom?
4 MR. LYDON: Object to the leading.

5 BY MR. ACOSTA:
6 Q. What are the reasons why you came into this
7 courtroom, Mr. Eastman?
8 MR. LYDON: Object. May we approach?
9 A. I came here because I'm still alive to tell
10 you.
11 MR. ACOSTA: Thank you.
12 THE COURT: Any additional cross-examination?
13 MR. LYDON: No.
14 MR. PARRISH: (Indicating negatively.)
15 THE COURT: All right. Mr. Eastman, you can
16 stand down. You are excused as a witness.
17 THE WITNESS: Thank you.
18 THE COURT: Counsel, approach the bench.
19 (Thereupon, the following bench conference was
20 had:)
21 THE COURT: Would this be a good time to take
22 our evening recess? What are you going to do?
23 You're pretty much done, right?
24 MR. ACOSTA: I just have a mortality table to
25 read in. Then I've got to make sure all my

3133

1 evidence is in, and then I'm going to rest.
2 MR. LYDON: Will be ready to go, Your Honor.
3 (Thereupon, the bench conference was
4 concluded.)
5 THE COURT: You folks want to come back at
6 8:30 tomorrow or 9:00?
7 MR. LYDON: 9:00 would be better for us.
8 THE COURT: Actually, 9:00 would be better for
9 us for technical reasons.
10 THE JURY: 9:00.
11 THE COURT: It's a great jury we've got.
12 Thank you. We'll see you at 9 o'clock tomorrow
13 morning.
14 MR. LYDON: We'll be ready then.
15 THE COURT: Okay. Court will be in recess
16 until 9:00 tomorrow.
17 (Whereupon, the jury was excused.)
18 THE COURT: Mr. Acosta --
19 MR. ACOSTA: Yes, sir.
20 THE COURT: -- The clerk is inquiring about
21 Exhibit 662, I guess.
22 MR. ACOSTA: Did I take it with me? I may
23 have taken it.
24 THE COURT: She's unsure whether that was
25 actually received.

3134

1 MR. ACOSTA: I was going to move the ones in
2 that we identified, so --
3 THE COURT: Is there an objection?
4 MR. CHRISTOPHER: No, Your Honor.
5 THE COURT: Those will be received.
6 (Thereupon, Plaintiff's Exhibit 662 and others
7 were received in evidence.)
8 MR. ACOSTA: Thank you.
9 THE COURT: Now we are recessed. Thank you.
10 (Whereupon, the proceedings were concluded at
11 4:55 p.m.)
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CERTIFICATION OF COURT REPORTER

STATE OF FLORIDA)
COUNTY OF PINELLAS)

I, Mary Elizabeth Blazer, RPR, Deputy Official Court
Reporter, in and for the Sixth Judicial Circuit, State
of Florida:
DO HEREBY CERTIFY that the foregoing proceedings were
had at the time and place set forth in the caption
thereof; that I was authorized to and did
stenographically report the said proceedings and that
the foregoing pages, numbered 2935 through 3135,
inclusive, is a true and correct transcription of said
stenographic report.
IN WITNESS WHEREOF, I have hereunto affixed my official
signature and seal of office this 26th day of March, 2003,
at St. Petersburg, Pinellas County, Florida.

Mary Elizabeth Blazer, RPR